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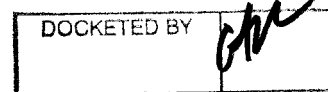
March 3, 2004

Ms. Teena Wolfe
Administrative Law Judge
ACC - HEARING DIVISION
1200 West Washington, 1st Floor
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

MAR - 3 2004

Case: Alltel Communications - Volumes I and II
Number: T-03887A-03-0316
Date: January 23 and February 17, 2004



Dear ALJ Wolfe:

With copy of this letter the original exhibits in this matter have been distributed, as follows:

Docket Control A-1 through 4

ALECA-1 through 4, 13, 14, 18, and 40 through 43

S-1 through 3 (S-4 is a late-filed exhibit)

Exhibit No. ALECA-8 has been deemed confidential and is enclosed for your safekeeping.

Exhibits Nos. ALECA-5 through 7, 9 through 12, 15 through 17, and 19 through 39 were not utilized.

Please let us know if you have any questions or if we may be of any further assistance.

Very truly yours,

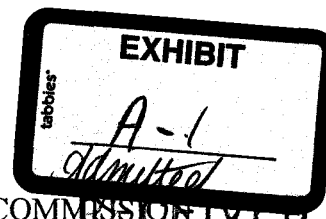
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Enclosure

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BEFORE THE ARIZONA CORPORATION COMMISSION

2004 MAR -3 P 4: 19

2003 MAY 19 P 4: 24

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IN THE MATTER OF THE APPLICATION OF
ALLTEL COMMUNICATIONS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934

Docket No. T-03285A-03-_____

**APPLICATION OF ALLTEL COMMUNICATIONS, INC.
FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

ALLTEL Communications, Inc., ("ALLTEL" or "Company"), by and through its counsel and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §214(e)(2), hereby petitions the Arizona Corporation Commission ("ACC" or "Commission") for designation as an Eligible Telecommunications Carrier ("ETC") for federal universal service funding throughout ALLTEL's licensed service area in the State of Arizona. As demonstrated below, ALLTEL meets all the statutory and regulatory prerequisites for ETC designation, and designating ALLTEL will serve the public interest.

I. ALLTEL's Universal Service Offering.

ALLTEL is authorized to provide cellular mobile radio telephone service in the following Arizona Cellular Market Areas: #26 Phoenix MSA, #77 Tucson MSA, #319 AZ RSA 2 and #322 AZ RSA 5. As an ETC, ALLTEL will offer a basic universal service package to subscribers who are eligible for Lifeline support. ALLTEL expects that its service offering will be competitive with those of the incumbent wireline carriers.

1 ALLTEL currently provides all the services and functionalities supported by the federal
2 universal service program, enumerated in Section 54.101(a) of the Federal Communications
3 Commission's ("FCC") Rules (47 C.F.R. §54.101(a)), throughout its licensed service area in the
4 State of Arizona. Upon designation as an ETC, ALLTEL will make available to consumers a
5 universal service offering over its cellular network infrastructure, using the same antenna, cell-site,
6 tower, trunking, mobile switching, and interconnection facilities used by the company to serve its
7 existing conventional mobile cellular service customers. ALLTEL will provide service to any
8 customer requesting this service within the designated service area.

9 **II. ALLTEL Offers All the Services Supported by the Federal High-Cost Universal**
10 **Service Program.**

11 Pursuant to 47 U.S.C. §214(e)(1), in order to be designated as an ETC, a carrier must be a
12 common carrier and offer and advertise the supported services throughout the designated service
13 area. The FCC has identified the following services and functionalities as the core services to be
14 offered by an ETC and supported by the federal universal service support mechanisms:

- 15 1. Voice-grade access to the public switched telephone network;
- 16 2. Local Usage;
- 17 3. Dual-tone, multi-frequency ("DTMF") signaling, or it
18 functional equivalent;
- 19 4. Single-party service or its functional equivalent;
- 20 5. Access to emergency services;
- 21 6. Access to operator services;
- 22 7. Access to interexchange service;
- 23 8. Access to directory assistance; and
- 24 9. Toll limitation for qualifying low-income consumers.¹

25 According to the Section 214(e)(6) Public Notice, a certification that the carrier provides
26 each of the supported services is required.² As shown below and in the Affidavit of Steve R.

27 ¹ 47 C.F.R §54.101(a).

² Section 214(e)(6) Public Notice at 22948.

1 Mowery, Vice President, State Government Affairs of ALLTEL, attesting that all representations in
2 this Application are true and correct to the best of his knowledge (attached hereto as *Exhibit A*),
3 ALLTEL provides or will provide, upon designation, the required services.

4 **1. Voice-grade access to the public switched telephone network:**

5 The FCC concluded that voice-grade access means the ability to make and receive phone
6 calls, within a bandwidth of approximately 300 to 3000 Hertz frequency range.³ ALLTEL meets
7 this requirement by providing voice-grade access to the public switched telephone network.
8 Through its interconnection arrangements with Local Exchange Carriers ("LECs"), all customers of
9 ALLTEL are able to make and receive calls on the public switched telephone network within the
10 specified bandwidth.

11 **2. Local Usage:**

12 Beyond providing access to the public switched network, an ETC must include local usage
13 as part of a universal service offering. To date, the FCC has not quantified a minimum amount of
14 local usage required to be included in a universal service offering, but has initiated a separate
15 proceeding to address this issue.⁴ As it relates to local usage, the NPRM sought comments on a
16 definition of the public service package that must be offered by all ETCs. Specifically, the FCC
17 sought comments on how much, *if any*, local usage should be required to be provided to customers
18 as part of a universal service offering.⁵ In the First Report and Order, the FCC deferred a
19 determination on the amount of local usage that a carrier would be required to provide.⁶ Any
20 minimum local usage requirement established by the FCC as a result of the October 1998 NPRM
21 will be applicable to all designated ETCs, not simply wireless service providers. ALLTEL will
22 comply with any and all minimum local usage requirements adopted by the FCC. ALLTEL will
23

24 ³ 47 C.F.R. §54.101(a)(1).

25 ⁴ See Federal and State Joint Board on Universal Service, Memorandum Opinion and Order and Further
26 Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) ("October 1998 NPRM").

27 ⁵ October 1998 NPRM at 21277-21281.

⁶ First Report and Order at 8812. See also Western Wireless Corporation, 16 FCC Rcd 48, 52-53 (2000),
aff'd, FCC 01-311 (October 19, 2001); Cellco Partnership, 16 FCC Rcd 29, 42 (2000).

1 meet the local usage requirements by including local usage plans as part of a universal service
2 offering.

3 **3. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent:**

4 DTMF is a method of signaling that facilitates the transportation of call set-up and call
5 detail information. Consistent with the principles of competitive and technological neutrality, the
6 FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of
7 this service requirement.⁷ ALLTEL currently uses out-of-band digital signaling. ALLTEL
8 therefore meets the requirement to provide DTMF signaling or its functional equivalent.

9 **4. Single-party service or its functional equivalent:**

10 "Single-party service" means that only one party will be served by a subscriber loop or
11 access line in contrast to a multi-party line.⁸ The FCC concluded that a wireless provider offers the
12 equivalent of single-party service when it offers a dedicated message path for the length of a user's
13 particular transmission.⁹ ALLTEL meets the requirement of single-party service by providing a
14 dedicated message path for the length of all customer calls.

15 **5. Access to emergency services:**

16 The ability to reach a public emergency service provider by dialing 911 is a required service
17 in any universal service offering. Phase I E911, which includes the capability of providing both
18 automatic numbering information ("ANI") and automatic location information ("ALI"), is only
19 required if a public emergency service provider makes arrangements with the local provider for the
20 delivery of such information.¹⁰ ALLTEL currently provides all of its customers with access to
21 emergency service by dialing 911 in satisfaction of the basic 911 requirement, and either provides,
22 or will provide subscribers with Phase I and Phase II E-911 services in accord with the deployment
23 schedules agreed to by ALLTEL and local or other governmental emergency service provider
24

25 ⁷ 47 C.F.R. §54.101(a)(3).

26 ⁸ First Report and Order, 12 FCC Rcd at 8810.

27 ⁹ Id.

¹⁰ See id. at 8815-17.

1 agencies.

2 **6. Access to operator services:**

3 Access to operator services is defined as any automatic or live assistance provided to a
4 consumer to arrange for the billing or completion, or both, of a telephone call.¹¹ ALLTEL meets
5 this requirement by providing all of its customers with access to operator services provided by
6 either the Company or other entities (*e.g.*, LECs, IXC's, etc.).

7 **7. Access to interexchange service:**

8 A universal service provider must offer consumers access to interexchange service to make
9 and receive toll or interexchange calls. Equal access, however, is not required. "The FCC do[es]
10 not include equal access to interexchange service among the services supported by universal service
11 mechanisms."¹² ALLTEL presently meets this requirement by providing all of its customers with
12 the ability to make and receive interexchange or toll calls through direct interconnection
13 arrangements the Company has with several IXC's.

14 **8. Access to directory assistance:**

15 The ability to place a call to directory assistance is a required service offering.¹³ ALLTEL
16 meets this requirement by providing all of its customers with access to directory assistance by
17 dialing "411" or "555-1212."

18 **9. Toll limitation for qualifying low-income consumers:**

19 An ETC must offer either "toll control" or "toll blocking" services to qualifying Lifeline
20 customers at no charge. The FCC no longer requires an ETC to provide both services as part of the
21 toll limitation service required under 47 C.F.R §54.101(a)(9). In particular, all ETCs must provide
22 toll blocking, which allows customers to block the completion of outgoing toll calls.¹⁴ ALLTEL
23 currently has no Lifeline customers because only carriers designated as an ETC can participate in
24

25 ¹¹ Id. at 8817-18.

26 ¹² Id. at 8819.

27 ¹³ Id. at 8821.

¹⁴ First Report and Order at 8821-22.

1 Lifeline.¹⁵ Once designated as an ETC, ALLTEL will participate in Lifeline as required, and will
2 provide toll blocking capability in satisfaction of the FCC's requirement. ALLTEL currently has
3 the technology to provide toll blocking and will use this technology to provide the service to its
4 Lifeline customers, at no charge, as part of its universal service offerings.

5 **III. ALLTEL Will Offer Supported Services Through its Own Facilities.**

6 The FCC's Section 214(e)(6) Public Notice established that a carrier requesting designation
7 must certify that it offers the supported services "either using its own facilities or a combination of
8 its own facilities and resale of another carrier's services."¹⁶ ALLTEL will provide the supported
9 services using its existing network infrastructure, which includes the same antenna, cell-site, tower,
10 trunking, mobile switching, and interconnection facilities used by the company to serve its existing
11 conventional mobile cellular service customers.

12 **IV. ALLTEL Will Advertise its Universal Service Offering.**

13 ALLTEL will advertise the availability of the supported services and the corresponding
14 charges in a manner that fully informs the general public of the services and charges.¹⁷ ALLTEL
15 currently advertises its wireless services through several different media. ALLTEL will use media
16 of general distribution that it currently employs to advertise its universal service offerings through-
17 out its service area in the State of Arizona. ALLTEL will comply with all form and content
18 requirements, if any, promulgated by the FCC in the future and required of all designated ETCs.

19 **V. ALLTEL Requests ETC Designation Throughout Its Licensed Service Area in the**
20 **State of Arizona.**

21 ALLTEL, for its wireless operations, is not a "rural telephone company" as that term is
22 defined by 47 U.S.C. §153(37). Accordingly, ALLTEL is required to describe the geographic area
23 in which it requests designation.¹⁸ ALLTEL requests ETC designation for its entire licensed
24

25 ¹⁵ See 47 C.F.R. §§54.400 to -415.

26 ¹⁶ Section 214 Public Notice at 22949.

27 ¹⁷ See Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949.

¹⁸ Id.

1 service area in Arizona. A map of ALLTEL's proposed ETC service area is attached hereto as
2 *Exhibit B*.

3 Under FCC Rule Section 54.207, a "service area" is a "geographic area established by a
4 state commission for the purpose of determining universal service obligations and support
5 mechanisms."¹⁹ For non-rural service areas, there are no restrictions on how a state commission
6 defines the "service area" for purposes of designating a competitive ETC. Therefore, the Commis-
7 sion may designate ALLTEL as an ETC in the non-rural wire centers set forth at *Exhibit C*. To the
8 extent ALLTEL serves only a portion of the wire center listed in Exhibit C, ALLTEL requests ETC
9 designation in that portion of the wire center where it provides service.²⁰

10 In an area served by a rural telephone company, the FCC's rules define "service area" to
11 mean the LEC study area unless a different definition of service area is established for such
12 company.²¹ The rural LEC study areas where ALLTEL serves the entire study area are set forth in
13 *Exhibit D* hereto. The Commission may designate ALLTEL as an ETC in those areas upon finding
14 that such designation would be in the public interest pursuant to 47 U.S.C. §214(e)(2).

15 **VI. ALLTEL Requests that Affected Rural LEC Service Areas be Redefined.**

16 Pursuant to 47 C.F.R. §54.207(c)(1), a petition to redefine a rural LEC service area must
17 contain, "an analysis that takes into account the recommendations of any Federal-State Joint Board
18 convened to provide recommendations with respect to the definition of a service area served by a
19 rural telephone company." ALLTEL requests that the Commission redefine the service areas for
20 the Arizona Telephone Co., CenturyTel of the Southwest, Inc., Midvale Telephone Exchange, Inc.,
21 Navajo Communications Co. - AZ, South Central Utah Telephone Assoc. and Table Top Tele-
22 phone Co., Inc. wire centers listed in Exhibit E. ALLTEL serves only a portion of the service area
23 of these six companies. Accordingly, the Commission may prefer to define the wire centers that
24 ALLTEL serves of each ILEC as one service area and the wire centers of each ILEC that ALLTEL
25

26 ¹⁹ 47 C.F.R. §54.207(a).

27 ²⁰ Those wire centers that ALLTEL partially serves are indicated on Exhibit C with the word "partial."

²¹ See 47 C.F.R. §54.207(b).

1 does not serve as a separate service area. The wire centers that ALLTEL does serve are set forth in
2 *Exhibit E*.

3 The FCC recently adopted a plan for disaggregation of rural LEC study areas in its
4 Fourteenth Report and Order, noting that such action "achieves a reasonable balance between rural
5 carriers' needs for flexibility and the Commission's goal of encouraging competitive entry."²² In
6 the instant case, reclassifying rural LEC service areas for ETC purposes is necessary in order to
7 facilitate competitive entry.

8 In the Recommended Decision that laid the foundation for the FCC's First Report and
9 Order, the Federal-State Joint Board enumerated three factors to be considered when redefining a
10 rural service area.²³ First, the Joint Board advised the state commission to consider whether the
11 competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost
12 exchanges.²⁴ As a wireless carrier, ALLTEL is restricted to providing service in those areas where
13 it is licensed by the FCC. ALLTEL is not picking and choosing the lowest cost exchanges.
14 ALLTEL has based its requested ETC area solely on its licensed service area and proposes to serve
15 its entire service area.

16 Second, the Joint Board urged the Commission to consider the rural carrier's special status
17 under the Telecommunications Act of 1996.²⁵ In deciding whether to award ETC status to
18 ALLTEL, the Commission will weigh numerous factors and will consider how the public interest is
19 affected by an award of ETC status pursuant to 47 C.F.R. §214(e)(2). Congress mandated this
20 public interest analysis in order to protect the special status of rural carriers in the same way it
21 established special considerations for rural carriers with regard to interconnection, unbundling, and
22
23

24 ²² Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of
25 Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth
Report and Order, FCC 01-157, Docket 96-45, 23 CR 1338, 1381 (May 23, 2001) ("Fourteenth Report and Order") at
¶144.

26 ²³ Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87 (1996).

27 ²⁴ Recommended Decision, 12 FCC Rcd 97 at ¶172.

²⁵ Id. at ¶173.

1 resale requirements.²⁶ Accordingly, if the Commission finds that ALLTEL's ETC designation is in
2 the public interest, it has duly recognized the special status of the rural carrier for purposes of
3 determining whether ALLTEL's service area designation should be adopted for federal universal
4 service funding purposes. No action in this proceeding will affect or prejudice any future action this
5 Commission may take with respect to the LEC's status as a rural telephone company.

6 Finally, the Federal-State Joint Board recommended that the FCC consider the
7 administrative burden a rural LEC would face by calculating its costs on a basis other than its entire
8 study area.²⁷ In the instant case, ALLTEL is proposing to redefine rural LEC service areas solely
9 for ETC designation purposes. Redefining service areas for ETC purposes will in no way impact
10 the way the affected rural LECs calculate their costs, but it is solely to determine the LEC area in
11 which ALLTEL is to be designated as an ETC. LECs may disaggregate their study areas to
12 reallocate high cost loop support payments pursuant to the FCC's Fourteenth Report and Order.²⁸
13 Accordingly, redefining rural LEC service areas as proposed in this Application will not impose
14 any additional burdens on rural LECs. Indeed, the Commission has previously determined that
15 there should be no administrative burden imposed on rural LECs by disaggregating and redefining
16 the proposed service area at the wire center level. See In the Matter of Application of Smith
17 Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C.
18 §214(e)(2) and A.A.C. R14-2-1203, Decision No. 63269 at 11.

19 **VII. Granting This Application Will Serve the Public Interest.**

20 Because ALLTEL is seeking designation in areas served by rural LECs, the Commission
21 must consider public interest factors prior to designating ALLTEL as an ETC.²⁹ Designating
22 ALLTEL as an ETC in the State of Arizona would further the public interest by bringing the
23

24 ²⁶ Id. at ¶173.

25 ²⁷ Id. at ¶174.

26 ²⁸ Fourteenth Report and Order, Multi-Association Group (MAG) Plan for Regulation of Interstate Services
27 of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board on
Universal Service, Second Report and Order and Further Notice of Proposed Rulemaking, 25 CR 1 (November 8,
2001).

²⁹ 47 U.S.C. §214(e)(2).

benefits of competition to an underserved marketplace.

The FCC has recognized the advantages wireless carriers can bring to the universal service program. In particular, the FCC has found that "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service."³⁰ One of the principal goals of the Telecommunications Act of 1996 was to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."³¹ Competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer's business. The FCC has determined that wireless providers such as ALLTEL may be designated as ETCs.³²

This Commission has already determined that designation of a wireless provider as an eligible telecommunications carrier is in the public interest. See In the Matter of Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)(2) and A.A.C. R14-2-1203, Decision No. 65054 at 12; In the Matter of Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)(2) and A.A.C. R14-2-1203, Decision No. 63421 at 2; In the Matter of Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)(2) and A.A.C. R14-2-1203, Decision No. 63269 at 12. Designating ALLTEL as an ETC would give those in rural areas in Arizona advanced telecommunications options.

Designating ALLTEL as an ETC will bring to consumers the benefits of competition, including increased choices, higher quality service, and lower rates. In a competitive market, rural consumers will be able to choose the services that best meet their communications needs. With a

³⁰ First Report and Order, 12 FCC Rcd. at 8776, 8882-8883.

³¹ Telecommunications Act of 1996, Public Law, 104-104, 100 Stat. 56 (1996).

³² Federal State Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd at 8776, 8858-59, ¶¶ 145-147.

1 choice of service providers, the consumer is able to select a provider based on service quality,
2 service availability, and rates. Without competition, the incumbent provider has little or no
3 incentive to introduce new, innovative, or advanced service offerings.

4 The public interest standard under Section 214(e)(2) for designating ETCs in territories
5 served by rural telephone companies emphasizes competition and consumer benefit, not incumbent
6 protection. In considering the impact that Western Wireless' ETC designation would have on rural
7 telephone companies, the FCC said, "[W]e believe that competition may provide incentives to the
8 incumbent to implement new operating efficiencies, lower prices, and offer better service to its
9 customers."³³ Further, Congress has mandated that universal service provisions be "competitively
10 neutral" and "necessary to preserve and advance universal service."³⁴ Designating ALLTEL as an
11 ETC would give those in rural areas in the State of Arizona advanced telecommunications options.

12 ALLTEL will implement service offerings and rate plans that will be competitive with
13 incumbent service offerings and affordable to consumers in the State of Arizona. ALLTEL
14 commits that its local calling area will be at least as large as the incumbent LEC, and ALLTEL
15 believes that in all cases its local calling area will be substantially larger, which will reduce intra-
16 LATA toll charges typically associated with wireline service. ALLTEL will provide access to
17 emergency services in compliance with all state and federal requirements, which will improve
18 service to Arizona citizens.

19 ALLTEL commits to use available federal high cost support for its intended purposes – the
20 construction, maintenance and upgrading of facilities serving the rural areas for which support is
21 intended. As of this date, ALLTEL can conceive of no business plan for remote rural areas that
22 supports deploying the type of robust wireless network required to compete on a level playing field
23 with incumbent carriers. Wireless telephone service is today a convenience, but in most rural areas
24 it cannot be counted on as a potential replacement for wireline service unless high cost loop support
25 is made available to drive infrastructure investment. Indeed, without the high cost program it is
26

27 ³³ Guam Cellular and Paging, Inc., DA 02-174 (released January 25, 2002) at ¶22.

³⁴ See 47 U.S.C. §253(b).

ROSHKA HEYMAN & DEWULF, PLC
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TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 doubtful that many rural areas would have wireline telephone service even today.

2 **REQUEST FOR RELIEF**

3 ALLTEL respectfully requests the Commission to expeditiously issue an Order designating
4 ALLTEL as an eligible telecommunications carrier for universal service purposes for its entire
5 service area in Arizona as requested in this application.

6
7 RESPECTFULLY SUBMITTED May 19, 2003.

8 **ALLTEL COMMUNICATIONS, INC .**

9
10 By 

11 Raymond S. Heyman
12 Michael W. Patten
13 ROSHKA HEYMAN & DEWULF, PLC
14 One Arizona Center
15 400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
(602) 256-6100

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20 Phoenix, Arizona 85007

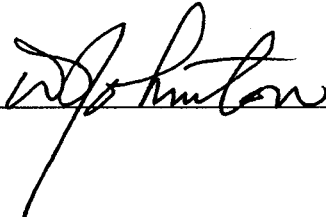
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EXHIBIT A

AFFIDAVIT OF STEVE MOWERY

I, Steve Mowery, do hereby declare as follows:

1. I am the authorized representative of ALLTEL Communications, Inc. ("ALLTEL") in charge of ALLTEL's Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in the state of Arizona. This affidavit is submitted in support of ALLTEL's Petition for Designation as an ETC in the state of Arizona.

2. ALLTEL is the licensee authorized to provide cellular radio telephone service in Arizona and is authorized to provide service in the requested ETC area described in its Application.

3. ALLTEL meets the criteria for ETC designation as explained herein.

4. ALLTEL is a "common carrier" for purposes of obtaining ETC designation pursuant to 47 U.S.C. §214(e)(1). A "common carrier" is generally defined in 47 U.S.C. §153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications by wire or radio. Section 20.9(1)7 of the Commission's Rules provides that cellular service is a common carrier service. See 47 C.F.R. §20.9(a)(7).

5. ALLTEL currently offers and is able to provide the services and functionalities identified in 47 C.F.R. §54.101(a). Each of these services and functionalities is discussed more fully below.

a. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately 300 to 3000 Hertz frequency range. See 47 C.F.R. §54.101(a)(1). ALLTEL meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with local telephone companies, all customers of ALLTEL are able to make and receive calls on the public switched telephone network within the specified bandwidth.

b. Local Usage. Beyond providing access to the public switched network, an ETC must include local usage as part of a universal service offering. To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue. See *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) ("October 1998 NPRM"). As it relates to local usage, the NPRM sought comments on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comments on how much, if any, local usage should be required to be provided to customers as part of a universal service offering. October 1998 NPRM at 21277-21281. In the *Universal Service Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide. *Universal Service Order* at 8813. Any minimum local usage requirement established by the FCC as a result of the October 1998 NPRM will be applicable to all designated ETCs, not simply wireless service providers. ALLTEL will comply with any and all minimum local usage requirements adopted by the FCC. ALLTEL will meet the local usage requirements by including local usage as part of a universal service offering.

c. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement. 47 C.F.R. §54.101(a)(3). ALLTEL currently uses out-of-band digital signaling and in-band multi-frequency ("MF")

signaling that is functionally equivalent to DTMF signaling. ALLTEL therefore meets the requirement to provide DTMF signaling or its functional equivalent.

d. Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line. *Universal Service Order* at 8810. The FCC concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user's particular transmission. *Universal Service Order* at 8810. ALLTEL meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

e. Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Phase I E-911, which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. ALLTEL currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of the basic 911 requirement, and either provides, or will provide subscribers with Phase I and Phase II E-911 services in accord with the deployment schedules agreed to by ALLTEL and local or other governmental emergency service provider agencies.

f. Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. *Universal Service Order*, 8817-18. ALLTEL meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities (e.g., LECs, IXC's, etc.).

g. Access to interexchange services. A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Equal access, however, is not required. "The FCC do[es] not include equal access to interexchange service among the services supported by universal service mechanisms." *Universal Service Order* at 8819. ALLTEL presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with IXC's.

h. Access to directory assistance. The ability to place a call to directory assistance is a required service offering. *Universal Service Order* at 8821. ALLTEL meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."

i. Toll limitation for qualifying low-income consumers. An ETC must offer either "toll control" or "toll blocking" services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the toll limitation service required under 47 C.F.R. §54.101(a)(9). See *Universal Service Fourth Order on Reconsideration*, FCC 97-420 (Dec. 30, 1997). In particular, all ETC's must provide toll blocking, which allows customers to block the completion of outgoing toll calls. *Universal Service Order*, at 8821-22. ALLTEL currently has no Lifeline customers because only carriers designated as an ETC can participate in Lifeline. See 47 C.F.R. §54.400-415. Once designated as an ETC, ALLTEL will participate in Lifeline as required, and will provide toll blocking capability in satisfaction of the FCC's requirement. ALLTEL currently has the technology to provide toll blocking and will use this technology to provide the service to its Lifeline customers, at no charge, as part of its universal service offerings.

6. ALLTEL will provide the supported services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 16, 2003.

Steve Mowrey
Its Authorized Representative

Subscribed and sworn before me this 16th day of May, 2003.

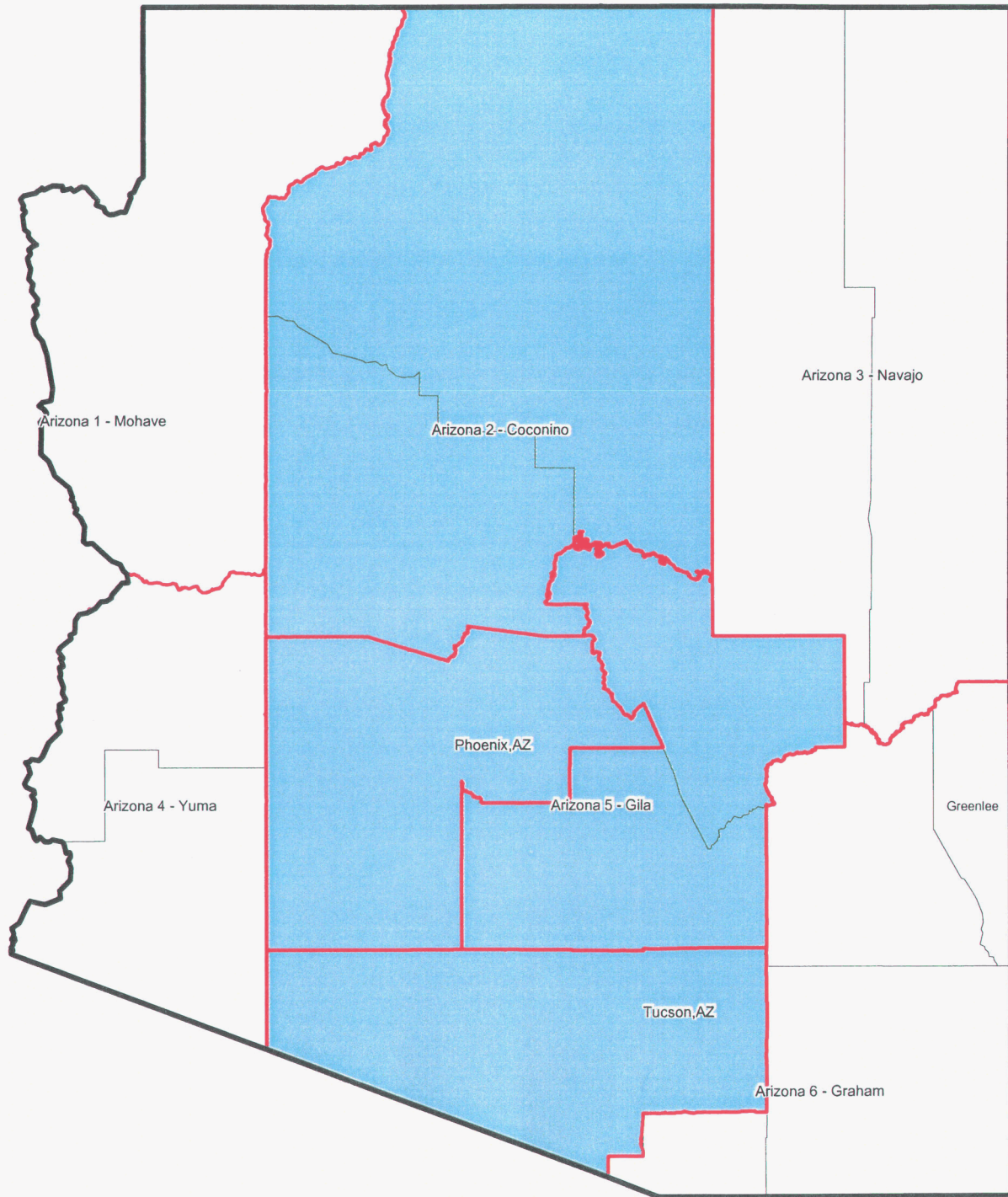
Sandra Jean Wood
Notary Public

Representative



EXHIBIT B

Arizona



 ALLTEL Wireless Coverage

EXHIBIT C

ALLTEL
NON-RURAL WIRE CENTERS SERVED IN THE STATE OF ARIZONA

COUNTY	INCUMBENT LEC	WIRE CENTER NAME	CILLI CODE
Maricopa County	QWEST CORPORATION	AVONDALE	GDYRAZCW
Maricopa County	QWEST CORPORATION	BUCKEYE	BCKYAZMA
Maricopa County	QWEST CORPORATION	CAVE CRK	CVCKAZMA
Maricopa County	QWEST CORPORATION	CHANDLER	CHNDAZSO
Maricopa County	QWEST CORPORATION	CHANDLER	CHNDAZWE
Maricopa County	QWEST CORPORATION	CHANDLER	CHNDAZMA
Maricopa County	QWEST CORPORATION	FOUNTAIN HLS	FTMDAZMA
Maricopa County	QWEST CORPORATION	GILA BEND	GLBNAZMA
Maricopa County	QWEST CORPORATION	GILBERT	MESAAZGI
Maricopa County	QWEST CORPORATION	GLENDALE	GLDLAZMA
Maricopa County	QWEST CORPORATION	HIGLEY	HGLYAZMA
Maricopa County	QWEST CORPORATION	LITCHFIELD PK	WHTKAZMA
Maricopa County	QWEST CORPORATION	LITCHFIELD PK	LTPKAZMA
Maricopa County	QWEST CORPORATION	MESA	MESAAZMA
Maricopa County	QWEST CORPORATION	MESA	SPRSAZWE
Maricopa County	QWEST CORPORATION	MESA	SPRSAZMA
Maricopa County	QWEST CORPORATION	MORRISTOWN	CRCYAZNM
Maricopa County	QWEST CORPORATION	NEW RIV	PHNXAZBW
Maricopa County	QWEST CORPORATION	NEW RIV	NWRVAZMA
Maricopa County	QWEST CORPORATION	PARADISE VLY	SCDLAZTH
Maricopa County	QWEST CORPORATION	PEORIA	PHNXAZPR
Maricopa County	QWEST CORPORATION	PEORIA	AGFIAZSR
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZGR
Maricopa County	QWEST CORPORATION	PHOENIX	DRVYAZNO
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZSY
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZEA
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZMA
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZLV
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZ81
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZPP
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZSO
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZSE
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZWE
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZ93
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZMY
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZNO
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZNE
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZNW
Maricopa County	QWEST CORPORATION	PHOENIX	PHNXAZCA
Maricopa County	QWEST CORPORATION	QUEEN CREEK	HGLYAZQC
Maricopa County	QWEST CORPORATION	RIO VERDE	FTMDAZNO
Maricopa County	QWEST CORPORATION	SCOTTSDALE	SCDLAZMA
Maricopa County	QWEST CORPORATION	SCOTTSDALE	SCDLAZSH
Maricopa County	QWEST CORPORATION	SCOTTSDALE	PRVYAZPP
Maricopa County	QWEST CORPORATION	SUN CITY	BRDSAZMA
Maricopa County	QWEST CORPORATION	TEMPE	TEMPAZMA
Maricopa County	QWEST CORPORATION	TEMPE	TEMPAZMC
Maricopa County	QWEST CORPORATION	TOLLESON	TLNNAZMA
Maricopa County	QWEST CORPORATION	TONOPAH	WNBGAZ01
Maricopa County	QWEST CORPORATION	WICKENBURG	WCBGAZMA
Maricopa County	QWEST CORPORATION	YOUNGTOWN	PHNXAZMR
Pima County	QWEST CORPORATION	GRN VLY	GNVYAZMA
Pima County	QWEST CORPORATION	MARANA	MARNAZMA
Pima County	QWEST CORPORATION	MARANA	MARNAZ02
Pima County	QWEST CORPORATION	TUBAC	TUBCAZMA
Pima County	QWEST CORPORATION	TUCSON	TCSNAZSE
Pima County	QWEST CORPORATION	TUCSON	TCSNAZSO
Pima County	QWEST CORPORATION	TUCSON	TCSNAZSW
Pima County	QWEST CORPORATION	TUCSON	TCSNAZCR

ALLTEL
NON-RURAL WIRE CENTERS SERVED IN THE STATE OF ARIZONA

COUNTY	INCUMBENT LEC	WIRE CENTER NAME	CILLI CODE
Pima County	QWEST CORPORATION	TUCSON	TCSNAZMA
Pima County	QWEST CORPORATION	TUCSON	TCSNAZEA
Pima County	QWEST CORPORATION	TUCSON	TCSNAZWE
Pima County	QWEST CORPORATION	TUCSON	TCSNAZRN
Pima County	QWEST CORPORATION	TUCSON	TCSNAZFW
Pima County	QWEST CORPORATION	TUCSON	TCSNAZTV
Pima County	QWEST CORPORATION	TUCSON	TCSNAZCA
Pima County	QWEST CORPORATION	TUCSON	TCSNAZCO
Pima County	QWEST CORPORATION	TUCSON	TCSNAZNO
Pima County	QWEST CORPORATION	TUCSON	TCSNAZML
Pima County	QWEST CORPORATION	TUCSON	CRNDAZMA
Pima County	QWEST CORPORATION	VAIL	VAILAZSO
Pima County	QWEST CORPORATION	VAIL	VAILAZNO
Yavapai County	QWEST CORPORATION	ASH FORK	ASFKAZMA
Yavapai County	QWEST CORPORATION	BLACK CANYON	BLCNAZMA
Yavapai County	QWEST CORPORATION	CAMP VERDE	CMVRAZMA
Yavapai County	QWEST CORPORATION	CAMP VERDE	CMVRAZRR
Yavapai County	QWEST CORPORATION	CHINO VALLEY	CHVYAZMA
Yavapai County	QWEST CORPORATION	COTTONWOOD	CTWDAZMA
Yavapai County	QWEST CORPORATION	COTTONWOOD	CTWDAZSO
Coconino County	QWEST CORPORATION	FLAGSTAFF	FLGSAZSO
Coconino County	QWEST CORPORATION	FLAGSTAFF	FLGSAZMA
Coconino County	QWEST CORPORATION	FLAGSTAFF	FLGSAZEA
Coconino County	QWEST CORPORATION	GRAND CANYON	GRCNAZMA
Coconino County	QWEST CORPORATION	PAGE	PAGEAZMA
Yavapai County	QWEST CORPORATION	PRESCOTT	PRSCAZMA
Yavapai County	QWEST CORPORATION	PRESCOTT	HMBLAZMA
Yavapai County	QWEST CORPORATION	PRESCOTT	MAYRAZMA
Yavapai County	QWEST CORPORATION	PRESCOTT	PRSCAZEA
Yavapai County	QWEST CORPORATION	SEDONA	SEDNAZSO
Yavapai County	QWEST CORPORATION	SEDONA	SEDNAZMA
Coconino County	QWEST CORPORATION	SEDONA	MSPKAZMA
Coconino County	QWEST CORPORATION	WILLIAMS	WLMSAZMA
Yavapai County	QWEST CORPORATION	YARNELL	YRNLAZMA
Pinal County	QWEST CORPORATION	APACHE JCT	SPRSAZEA
Pinal County	QWEST CORPORATION	ARIZONA CITY	AZCYAZ03
Pinal County	QWEST CORPORATION	CASA GRANDE	CSGRAZMA
Pinal County	QWEST CORPORATION	COOLIDGE	CLDGAZMA
Pinal County	QWEST CORPORATION	DUDDLEYVILLE	DDVLAZNM
Pinal County	QWEST CORPORATION	ELOY	ELOYAZ01
Pinal County	QWEST CORPORATION	FLORENCE	FLRNAZMA
Gila County	QWEST CORPORATION	GLOBE	GLOBAZMA
Gila County	QWEST CORPORATION	HAYDEN	HYDNAZMA
Pinal County	QWEST CORPORATION	KEARNY	KRNYAZMA
Pinal County	QWEST CORPORATION	MAMMOTH	MMTHAZMA
Pinal County	QWEST CORPORATION	MARICOPA	MRCPAZMA
Gila County	QWEST CORPORATION	MIAMI	MIAMAZMA
Pinal County	QWEST CORPORATION	ORACLE	ORCLAZMA
Gila County	QWEST CORPORATION	PAYSON	PYSNAZMA
Gila County	QWEST CORPORATION	PINE	PINEAZMA
Pinal County	QWEST CORPORATION	SAN MANUEL	SNMNAZMA
Pinal County	QWEST CORPORATION	STANFIELD	STFDAZMA
Pinal County	QWEST CORPORATION	SUPERIOR	SPRRAZMA
Gila County	QWEST CORPORATION	TONTO CREEK	TNCKAZMA
Pinal County	QWEST CORPORATION	WHITLOW	WHTLAZMA
Navajo County	QWEST CORPORATION	WINSLOW - partial	WNSLAZMA



ALLTEL

RURAL INCUMBENT LECS ENTIRE STUDY AREA SERVED BY ALLTEL

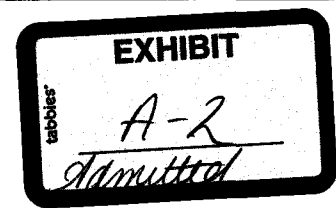
**ACCIPITER COMMUNICATIONS, INC
GILA RIVER TELECOMM INC.
SAN CARLOS APACHE TELECOMMUNICATIONS
TOHONO O ODHAM UTILITY AUTHORITY**



EXHIBIT E

ALLTEL
RURAL ILEC STUDY AREAS PARTIALLY SERVED IN THE STATE OF ARIZONA
AND WHICH ALLTEL REQUESTS THE STUDY AREAS BE REDEFINED
TO INCLUDE THE FOLLOWING WIRE CENTERS

COUNTY	INCUMBENT LEC	WIRE CENTER NAME	CILLI CODE
Maricopa County	ARIZONA TELEPHONE CO.	TONOPAH	HRVYAZXC
Pima County	ARIZONA TELEPHONE CO.	TUCSON	SASBAZXC
Coconino County	ARIZONA TELEPHONE CO.	BLUE RIDGE	BLRGZXC
Coconino County	ARIZONA TELEPHONE CO.	MARBLE CANYON	MRCNAZXC
Coconino County	ARIZONA TELEPHONE CO.	MARBLE CANYON	MRCNAZXE
Coconino County	ARIZONA TELEPHONE CO.	MORMON LAKE	MMLKAZXC
Coconino County	ARIZONA TELEPHONE CO.	SUPAI	SUPAAZXC
Gila County	ARIZONA TELEPHONE CO.	ROOSEVELT	RSVTAZXC
Gila County	ARIZONA TELEPHONE CO.	TONTO BASIN	TNBSAZXC
Yuma County	ARIZONA TELEPHONE CO.	DATELAND - partial	DTLDAZ01
Navajo County	CENTURYTEL OF THE SOUTHWEST INC	KYKOTSMOVI VILLAGE - partial	KIVGAZXC
Navajo County	CITIZENS TELECOMMS CO OF WHITE M	CIBICUE - partial	CIBCAZXC
Navajo County	CITIZENS TELECOMMS CO OF WHITE M	HEBER - partial	HEBRAZXC
Navajo County	CITIZENS TELECOMMS CO OF WHITE M	WHITERIVER - partial	WHRVAZXB
Gila County	MIDVALE TELEPHONE EXCHANGE INC.	YOUNG	YONGAZXC
Cochise County	MIDVALE TELEPHONE EXCHANGE INC.	CASCABEL - partial	CSELAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	KAIBITO	KABTAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	LECHEE	LCHEAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	LEUPP	LEPPAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	TUBA CITY	TBCYAZXC
Coconino County	SOUTH CENTRAL UTAH TELEPHONE ASS	FREDONIA	FRDNAZAC
Maricopa County	TABLE TOP TELEPHONE CO. INC.	AGUILA	AGULAZXC
Pima County	TABLE TOP TELEPHONE CO. INC.	AJO	AJO AZXC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	BAGDAD	BGDDAZXC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	SELIGMAN	SGMNAZXC



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

**MARC SPITZER, CHAIRMAN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES**

**FILE
ORIGINAL**

**IN THE MATTER OF THE APPLICATION OF
ALLTEL COMMUNICATIONS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934**

Docket No. T-03887A-03-0316

**DIRECT TESTIMONY OF
LAWRENCE J. KRAJCI
ON BEHALF OF
ALLTEL COMMUNICATIONS, INC.**

DECEMBER 4, 2003

1 **Q: Please state your name, position, and business address.**

2 A: My name is Lawrence J. Krajci. I am Staff Manager of State Government
3 Affairs for ALLTEL Communications, Inc. My business address is One Allied
4 Drive, P.O. Box 2177, Little Rock, Arkansas 72203.

5 **Q: Please describe your educational background and experience.**

6 A: I received a Bachelor of Science Degree from Penn State University. I've been
7 employed by ALLTEL for the past 20 years in a variety of sales, customer
8 service, inter-company relations, and regulatory positions. I am presently
9 responsible for representing ALLTEL Communications, Inc. and other
10 ALLTEL subsidiary interests in state regulatory matters in Arizona, Arkansas,
11 Colorado, Kansas, Michigan, Missouri, New Mexico, Ohio, and West Virginia.
12 I have testified on regulatory matters before state public service/public utility
13 commissions in Arkansas, Georgia, Missouri, New Mexico, Oklahoma,
14 Pennsylvania, and Tennessee.

15 **Q: Please describe ALLTEL Communications, Inc.**

16 A: ALLTEL Communications, Inc. is a wholly-owned subsidiary of the ALLTEL
17 Corporation system. As a telecommunications carrier licensed by the Federal
18 Communications Commission ("FCC"), ALLTEL Communications, Inc.
19 ("ALLTEL") provides commercial mobile radio service ("CMRS") to
20 customers in Arizona Cellular Market Areas ("CMAs") #26 Phoenix MSA, #77
21 Tucson MSA, #319 AZ RSA 2, #322 AZ RSA 5. ALLTEL also serves CMA #
22 323 AZ RSA #6, however, this recently acquired service area is not included in
23 this ETC application.

24 **Q: What is the purpose of your testimony in this proceeding?**

25 A: My testimony supports ALLTEL's application for designation as an Eligible
26 Telecommunications Carrier ("ETC") filed with this Commission on May 19,

2003. I also hereby incorporate ALLTEL's application in this docket as part of my direct testimony with the exception of a slight modification to Exhibit E-1 to the Application, as discussed below.

Q. What is the significance of receiving ETC designation from this Commission?

A: ETC designation will allow ALLTEL to receive Federal Universal Support Funds ("USF") in providing telecommunications services to customers throughout its approved ETC service territory in Arizona.

Q: Has the Federal Communications Commission ("FCC") established guidelines for state Commissions to employ in determining ETC designation?

A: Yes. In order to be designated as an ETC, a carrier must be a common carrier and must offer and advertise the supported services throughout the designated service area. 47 U.S.C. §214(e)(1). The FCC has identified the following supported services and functionalities as the core supported services to be offered by an ETC and supported by federal universal service support mechanisms:

1. Voice-grade access to the public switched telephone network;
2. Local Usage;
3. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent;
4. Single-party service or its functional equivalent;
5. Access to emergency services;
6. Access to operator services;
7. Access to interexchange service;
8. Access to directory assistance; and
9. Toll limitation for qualifying low-income consumers.

47 C.F.R. §54.101(a).

1 Q: Can you briefly describe how ALLTEL plans to meet the FCC's criteria
2 for providing the supported services?

3 A: Voice-grade access to the public switched telephone network. The FCC
4 concluded that voice-grade access means the ability to make and receive phone
5 calls, within a bandwidth of approximately 2700 Hertz frequency range. *See*
6 *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First*
7 *Report and Order*, 12 FCC Rcd 8776, 8810-11 (1997) ("*Universal Service*
8 *Order*"). ALLTEL meets this requirement by providing voice-grade access to
9 the public switched telephone network. Through its interconnection arrange-
10 ments with local telephone companies, all customers of ALLTEL are able to
11 make and receive calls on the public switched telephone network within the
12 specified bandwidth.

13 Local Usage. Beyond providing access to the public switched network,
14 an ETC must include local usage as part of a universal service offering. To
15 date, the FCC has not quantified a minimum amount of local usage required to
16 be included in a universal service offering, but has initiated a separate
17 proceeding to address this issue. *See Federal-State Joint Board on Universal*
18 *Service, Memorandum Opinion and Order and Further Notice of Proposed*
19 *Rulemaking*, 13 FCC Rcd 21252 (1998) ("*October 1998 NPRM*"). As it relates
20 to local usage, the NPRM sought comments on a definition of the public
21 service package that must be offered by all ETCs. Specifically, the FCC sought
22 comments on how much, *if any*, local usage should be required to be provided
23 to customers as part of a universal service offering. [*October 1998 NPRM* at
24 21277-21281] In the *Universal Service Order*, the FCC deferred a deter-
25 mination on the amount of local usage that a carrier would be required to
26 provide. [*Universal Service Order* at 8813] Any minimum local usage
27 requirement established by the FCC as a result of the *October 1998 NPRM* will
28 be applicable to all designated ETCs, not simply wireless service providers.

1 ALLTEL will comply with any and all minimum local usage requirements
2 adopted by the FCC. ALLTEL will meet the local usage requirements by
3 including local usage as part of a universal service offering.

4 Dual-tone, multi-frequency ("DTMF") signaling, or its functional equi-
5 valent. DTMF is a method of signaling that facilitates the transportation of call
6 set-up and call detail information. Consistent with the principles of compe-
7 titive and technological neutrality, the FCC permits carriers to provide
8 signaling that is functionally equivalent to DTMF in satisfaction of this service
9 requirement. 47 C.F.R. § 54.101(a)(3). ALLTEL currently uses out-of-band
10 digital signaling and in-band multi-frequency ("MF") signaling that is
11 functionally equivalent to DTMF signaling. ALLTEL therefore meets the
12 requirement to provide DTMF signaling or its functional equivalent.

13 Single-party service or its functional equivalent. "Single-party service"
14 means that only one party will be served by a subscriber loop or access line in
15 contrast to a multi-party line. [*Universal Service Order* at 8810] The FCC
16 concluded that a wireless provider offers the equivalent of single-party service
17 when it offers a dedicated message path for the length of a user's particular
18 transmission. [*Universal Service Order* at 8810] ALLTEL meets the
19 requirement of single-party service by providing a dedicated message path for
20 the length of all customer calls.

21 Access to emergency services. The ability to reach a public emergency
22 service provider by dialing 911 is a required service in any universal service
23 offering. Phase I E-911, which includes the capability of providing both
24 automatic numbering information ("ANI") and automatic location information
25 ("ALI"), is only required if a public emergency service provider makes
26 arrangements with the local provider for the delivery of such information.
27 ALLTEL currently provides all of its customers with access to emergency
28 service by dialing 911 in satisfaction of the basic 911 requirement, and either

1 provides, or will provide subscribers with Phase I and Phase II E-911 services
2 in accord with the deployment schedules agreed to by ALLTEL and local or
3 other governmental emergency service provider agencies.

4 Access to operator services. Access to operator services is defined as
5 any automatic or live assistance provided to a consumer to arrange for the
6 billing or completion, or both, of a telephone call. [*Universal Service Order* at
7 8817-18] ALLTEL meets this requirement by providing all of its customers
8 with access to operator services provided by either the Company or other
9 entities (e.g., LECs, IXC's, etc.).

10 Access to interexchange services. A universal service provider must
11 offer consumers access to interexchange service to make and receive toll or
12 interexchange calls. Equal access, however, is not required. "The FCC do[es]
13 not include equal access to interexchange service among the services supported
14 by universal service mechanisms." [*Universal Service Order* at 8819]
15 ALLTEL presently meets this requirement by providing all of its customers
16 with the ability to make and receive interexchange or toll calls through direct
17 interconnection arrangements the Company has with IXC's.

18 Access to directory assistance. The ability to place a call to directory
19 assistance is a required service offering. [*Universal Service Order* at 8821]
20 ALLTEL meets this requirement by providing all of its customers with access
21 to directory assistance by dialing "411" or "555-1212."

22 Toll limitation for qualifying low-income consumers. An ETC must
23 offer either "toll control" or "toll blocking" services to qualifying Lifeline
24 customers at no charge. The FCC no longer requires an ETC to provide both
25 services as part of the toll limitation service required under 47 C.F.R.
26 §54.101(a)(9). See *Universal Service Fourth Order on Reconsideration*, FCC
27 97-420 (Dec. 30, 1997). In particular, all ETCs must provide toll blocking,
28 which allows customers to block the completion of outgoing toll calls.

1 [Universal Service Order at 8821-22] ALLTEL currently has no Lifeline
2 customers because only carriers designated as an ETC can participate in
3 Lifeline. See 47 C.F.R. §54.400-415. Once designated as an ETC, ALLTEL
4 will participate in Lifeline as required, and will provide toll blocking capability
5 in satisfaction of the FCC's requirement. ALLTEL currently has the technology
6 to provide toll blocking and will use this technology to provide the service to
7 its Lifeline customers, at no charge, as part of its universal service offerings.

8 **Q: Is ALLTEL a "common carrier?"**

9 A: Yes. ALLTEL is a "common carrier" for purposes of obtaining ETC
10 designation pursuant to 47 U.S.C. § 214(e)(1). A "common carrier" is
11 generally defined in 47 U.S.C. § 153(10) as a person engaged as a common
12 carrier on a for-hire basis in interstate communications by wire or radio.
13 Section 20.9(1)7 of the Commission's Rules provides that cellular service is a
14 common carrier service. See 47 C.F.R. § 20.9(a)(7).

15 **Q: Does ALLTEL offer and advertise all of these supported services through-**
16 **out the designated service area?**

17 A: ALLTEL will offer and advertise the supported services upon receiving its
18 ETC designation from this Commission.

19 **Q: Are there any other considerations that need to be taken into account by**
20 **the Commission before granting ETC status?**

21 A: Yes. ALLTEL's request for ETC designation includes both rural and non-rural
22 wire centers of incumbent local exchange carriers (ILECs). When designating
23 an ETC in rural wire centers, under 47 USC § 214(e)(6), the Commission must
24 make a determination that the designation is in the public interest.

1 **Q: Is ALLTEL's ETC designation in rural wire centers in the public interest?**

2 **A:** Yes. Designating ALLTEL as an ETC in Arizona would further the public
3 interest by bringing the benefits of competition to the rural telecommunications
4 marketplace. The FCC has recognized the advantages wireless carriers can
5 bring to the universal service program. In particular, the FCC has found that
6 "imposing additional burdens on wireless entrants would be particularly
7 harmful to competition in rural areas, where wireless carriers could potentially
8 offer service at much lower costs than traditional wireline service." [*Universal*
9 *Service Order* at 8881-8882] One of the principal goals of the Telecom-
10 munications Act of 1996 was to "promote competition and reduce regulation in
11 order to secure lower prices and higher quality services for American
12 telecommunications consumers and encourage the rapid deployment of new
13 telecommunications technologies." Telecommunications Act of 1996, Public
14 Law, 104, 100 Stat. 56 (1996). The FCC has determined that wireless
15 providers such as ALLTEL may be designated as ETCs. [*Universal Service*
16 *Order* at 8858-59, ¶¶ 145-147] Designating ALLTEL as an ETC would give
17 those in rural areas in Arizona additional telecommunications options.

18 ALLTEL will implement service offerings and rate plans that will be
19 competitive with incumbent service offerings and affordable to Arizona's
20 consumers. ALLTEL commits that its local calling area will be at least as large
21 as the incumbent LEC, and ALLTEL believes that in all cases its local calling
22 area will be substantially larger, which will reduce intraLATA toll charges
23 typically associated with wireline service. ALLTEL will provide access to
24 emergency services in compliance with all state and federal requirements.
25 ALLTEL commits to use available federal high cost support for its intended
26 purposes – the construction, maintenance and upgrading of facilities serving
27 the rural areas for which support is intended. As of this date, ALLTEL can
28 conceive of no business plan for remote rural areas which supports deploying

1 the type of robust wireless network required to effectively compete with
2 incumbent carriers without USF support. Wireless telephone service is today a
3 convenience, but in most rural areas it cannot be counted on as a potential
4 replacement for wireline service unless high cost loop support is made
5 available to drive infrastructure investment. Indeed, without the high cost
6 program it is doubtful that many rural areas would have wireline telephone
7 service even today. Provision of high cost support to ALLTEL will enable the
8 company to expand its facilities and make available for the first time a
9 potential competitor for primary telephone service in remote areas of Arizona.

10 **Q. Will ALLTEL's drawing of support adversely impact the level of support**
11 **currently afforded to rural telecommunications companies and/or other**
12 **ILECs?**

13 **A:** No. ALLTEL's drawing of support from the Universal Service Fund will not
14 impact the level of support awarded to rural telecommunication companies or
15 other ETCs. The size of the federal fund and thus the contributions thereto are
16 adjusted on a quarterly basis to meet any additional demands on the fund. The
17 federal universal service support mechanisms support all lines served by ETCs
18 in rural and high-cost areas. Under the federal rules, ALLTEL's receipt of
19 high-cost support will not affect the per-line support amount that the incumbent
20 carrier receives.

21 **Q. Briefly describe to the Commission what your plans are for the universal**
22 **service funds you will receive.**

23 **A:** ALLTEL intends to use federal universal service support to operate, expand
24 and maintain its facilities in Arizona that are integral components in the
25 provision of cellular phone service to rural and low-population areas.
26 Universal service support will enable ALLTEL to expand its coverage and
27 improve signal strength in more remote areas.

1 **Q: When do you intend to start these improvements?**

2 A: ALLTEL intends to start improving its network as soon as possible after ETC
3 designation and receipt of universal service support.

4 **Q: What benefits can the people of the State of Arizona expect to see from use**
5 **of these funds?**

6 A: The primary benefit to be gained by the people of Arizona will be the benefit of
7 choice. The benefits of competition have been proven over and over again.
8 With increased competition, service quality improves and value added services
9 provide customers with more for less. Arizona residents will benefit from the
10 variety of local usage plans that ALLTEL will include as part of its universal
11 service offering and will be able to choose service based on pricing, service
12 quality, customer service and service availability. Due to the cost of providing
13 service in remote and rural areas, most consumers in rural areas have not
14 enjoyed the benefits of competition. In contrast, the urban areas have been
15 enjoying the benefits of competition since the passage of the 1996 Telecom-
16 munications Act. These urban consumers have the ability to choose between a
17 myriad of rate plans, calling areas, and long distance offerings that fit their
18 particular needs. Universal service funding will help to make it economically
19 feasible for ALLTEL to compete in the more remote areas.

20 **Q: Does the Commission need to take any other actions with respect to**
21 **ALLTEL's application?**

22 A: Yes. As noted in its application, ALLTEL requests that the Commission
23 redefine the ILECs' service areas for the purposes of identifying high cost
24 support to coincide with ALLTEL's licensed service areas. This is necessary
25 due to the fact that ALLTEL cannot provide service in areas in which it is not
26 licensed. Redefining service areas for ETC purposes will in no way impact the
27 way the affected rural LECs calculate their costs, but it is solely to determine

1 the LEC area in which ALLTEL is to be designated as an ETC. Additionally,
2 no action in this proceeding will affect or prejudice any future action this
3 Commission may take with respect to the LEC's status as a rural telephone
4 company.

5 **Q. Can you identify which ILEC service areas ALLTEL is asking this**
6 **Commission to redefine?**

7 **A.** Yes. Attached to this testimony is "Exhibit 1" which lists the ILEC exchanges
8 to be included in ALLTEL's ETC service area. This exhibit differs from
9 "Exhibit E-1" that was included as part of ALLTEL's application, in that all
10 "partially served" wire centers have been removed. ALLTEL believes that it is
11 operationally and administratively more efficient to limit its ETC designation to
12 areas no smaller than an entire wire center. This is also consistent with FCC
13 policy and actions.

14 **Q: Can you please summarize your testimony?**

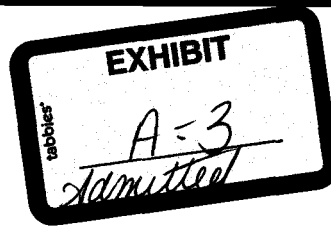
15 **A:** ALLTEL believes that its application for ETC designation contains all
16 necessary information for the Commission to grant ETC status. ALLTEL
17 meets the criteria established by the FCC with respect to the provision of
18 supported services. ALLTEL also has established that granting ETC status
19 serves the public interest as such designation will bring the benefits of
20 competitive choice to rural Arizona consumers. And finally, ALLTEL's
21 application identifies the actions to be taken by the Commission in redefining
22 ILEC service areas to coincide with ALLTEL's licensed service areas for the
23 purposes of receiving federal high cost support.

24 **Q: Does this conclude your direct testimony?**

25 **A:** Yes.

ALLTEL
RURAL ILEC STUDY AREAS PARTIALLY SERVED IN THE STATE OF ARIZONA
AND WHICH ALLTEL REQUESTS THE STUDY AREAS BE REDEFINED
TO INCLUDE THE FOLLOWING WIRE CENTERS

COUNTY	INCUMBENT LEC	WIRE CENTER NAME	CILLI CODE
Maricopa County	ARIZONA TELEPHONE CO.	TONOPAH	HRVYAZXC
Pima County	ARIZONA TELEPHONE CO.	TUCSON	SASBAZXC
Coconino County	ARIZONA TELEPHONE CO.	BLUE RIDGE	BLRGZXC
Coconino County	ARIZONA TELEPHONE CO.	MARBLE CANYON	MRCNAZXC
Coconino County	ARIZONA TELEPHONE CO.	MARBLE CANYON	MRCNAZXE
Coconino County	ARIZONA TELEPHONE CO.	MORMON LAKE	MMLKAZXC
Coconino County	ARIZONA TELEPHONE CO.	SUPAI	SUPAAZXC
Gila County	ARIZONA TELEPHONE CO.	ROOSEVELT	RSVTAZXC
Gila County	ARIZONA TELEPHONE CO.	TONTO BASIN	TNBSAZXC
Gila County	MIDVALE TELEPHONE EXCHANGE INC.	YOUNG	YONGAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	KAIBITO	KABTAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	LECHEE	LCHEAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	LEUPP	LEPPAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	TUBA CITY	TBCYAZXC
Coconino County	SOUTH CENTRAL UTAH TELEPHONE ASS	FREDONIA	FRDNAZAC
Maricopa County	TABLE TOP TELEPHONE CO. INC.	AGUILA	AGULAZXC
Pima County	TABLE TOP TELEPHONE CO. INC.	AJO	AJO AZXC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	BAGDAD	BGDDAZXC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	SELIGMAN	SGMNAZXC



BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

COMMISSIONERS

MARC SPITZER, CHAIRMAN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ALLTEL COMMUNICATIONS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934

Docket No. T-03887A-03-0316

**NOTICE OF FILING REVISED
EXHIBITS D AND E TO
APPLICATION**

Please take notice that ALLTEL is filing revised Exhibits D and E to its Application. These exhibits replace the Exhibit D attached to the Application and the revised Exhibit E attached to the direct testimony of Lawrence Kracji. Exhibit D was revised to reflect additional information concerning the rural ILEC study areas and Exhibit E was revised to include inadvertently-omitted wire centers.

DATED: December 19, 2003.

ALLTEL COMMUNICATIONS, INC.

By

A handwritten signature in black ink, appearing to read "Raymond S. Heyman".

Raymond S. Heyman
Michael W. Patten
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1 **ORIGINAL + 13 COPIES** of the foregoing
2 filed December 19, 2003, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington
6 Phoenix, Arizona 85007

7 **COPIES** of the foregoing hand-delivered
8 December 19, 2003, to:

9 Teena Wolfe, Esq.
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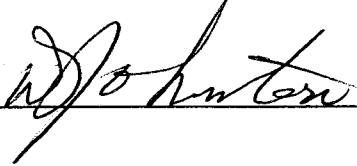
24 **COPIES** of the foregoing mailed
25 December 19, 2003, to:

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REVISED
EXHIBIT D

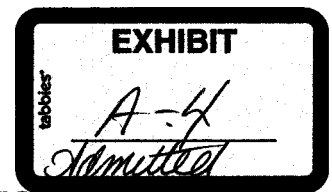
ALLTEL
RURAL ILEC STUDY AREAS ENTIRELY SERVED BY ALLTEL IN THE STATE OF ARIZONA

COUNTY	INCUMBENT LEC	WIRE CENTER NAME	CILLI CODE
Maricopa County	ACCIPITER COMMUNICATIONS INC	PEORIA	PEORAZZF
Maricopa County	GILA RIVER TELECOMM INC.	CHANDLER	LNBTAXXC
Maricopa County	GILA RIVER TELECOMM INC.	KOMATKE	KMTKAZXA
Maricopa County	GILA RIVER TELECOMM INC.	LAVEEN	MRVGAZXC
Pinal County	GILA RIVER TELECOMM INC.	SACATON	BLWRAZXA
Pinal County	GILA RIVER TELECOMM INC.	SACATON	SCTNAZXC
Pinal County	GILA RIVER TELECOMM INC.	SACATON	CSBLAZXA
Pinal County	GILA RIVER TELECOMM INC.	SACATON	STTNAZXA
Gila County	SAN CARLOS APACHE TELECOMMUNICAT	PERIDOT	PRDTAZ01
Pima County	TOHONO O ODHAM UTILITY AUTHORITY	SAN SIMON	SNRSAZXC
Pima County	TOHONO O ODHAM UTILITY AUTHORITY	SELLS	SLLSAZXA
Pima County	TOHONO O ODHAM UTILITY AUTHORITY	SELLS	SNRSAZXA

REVISED
EXHIBIT E

ALLTEL
RURAL ILEC STUDY AREAS PARTIALLY SERVED IN THE STATE OF ARIZONA
AND WHICH ALLTEL REQUESTS THE STUDY AREAS BE REDEFINED
TO INCLUDE THE FOLLOWING WIRE CENTERS

COUNTY	INCUMBENT LEC	WIRE CENTER NAME	CILLI CODE
Maricopa County	ARIZONA TELEPHONE CO.	TONOPAH	HRVYAZXC
Pima County	ARIZONA TELEPHONE CO.	TUCSON	SASBAZXC
Coconino County	ARIZONA TELEPHONE CO.	BLUE RIDGE	BLRGZXC
Coconino County	ARIZONA TELEPHONE CO.	MARBLE CANYON	MRCNAZXC
Coconino County	ARIZONA TELEPHONE CO.	MARBLE CANYON	MRCNAZXC
Coconino County	ARIZONA TELEPHONE CO.	MORMON LAKE	MMLKAZXC
Coconino County	ARIZONA TELEPHONE CO.	SUPAI	SUPAAZXC
Gila County	ARIZONA TELEPHONE CO.	ROOSEVELT	RSVTAZXC
Gila County	ARIZONA TELEPHONE CO.	TONTO BASIN	TNBSAZXC
Gila County	MIDVALE TELEPHONE EXCHANGE INC.	YOUNG	YONGAZXC
Yavapi County	MIDVALE TELEPHONE EXCHANGE INC.	GRANITE MOUNTAIN	SCDMAZ89DSO
Yavapi County	MIDVALE TELEPHONE EXCHANGE INC.	MILLSITE	DEWYAZ01DSO
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	KAIBITO	KABTAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	LECHEE	LCHEAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	LEUPP	LEPPAZXC
Coconino County	NAVAJO COMMUNICATIONS CO. - AZ	TUBA CITY	TBCYAZXC
Coconino County	SOUTH CENTRAL UTAH TELEPHONE ASS	FREDONIA	FRDNAZAC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	INSCRIPTION CANYON	SGMNAZXCDSO
Maricopa County	TABLE TOP TELEPHONE CO. INC.	AGUILA	AGULAZXC
Pima County	TABLE TOP TELEPHONE CO. INC.	AJO	AJO AZXC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	BAGDAD	BGDDAZXC
Yavapai County	TABLE TOP TELEPHONE CO. INC.	SELIGMAN	SGMNAZXC



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

**MARC SPITZER, CHAIRMAN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES**

IN THE MATTER OF THE APPLICATION OF
ALLTEL COMMUNICATIONS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934

Docket No. T-03887A-03-0316

**REBUTTAL TESTIMONY OF
LAWRENCE J. KRAJCI
ON BEHALF OF
ALLTEL COMMUNICATIONS, INC.**

JANUARY 20, 2004

1 **Q: Please state your name, position, and business address.**

2 A: My name is Lawrence J. Krajci. I am Staff Manager of State Government Affairs for
3 ALLTEL Communications, Inc. My business address is One Allied Drive, P.O. Box
4 2177, Little Rock, Arkansas, 72203.

5 **Q: Are you the same Lawrence J. Krajci who filed Direct Testimony in this case on**
6 **December 4, 2003?**

7 A: Yes, I am.

8 **Q: What is the purpose of your testimony today?**

9 A: My testimony responds to the Direct Testimony filed in this proceeding by the
10 ALECA witnesses, Judy D. Bruns and Steven D. Metts.

11 **Q: What is your overall response to the testimony filed by Ms. Bruns and Mr.**
12 **Metts?**

13 A: Both Arizona Local Exchange Carriers Association ("ALECA") witnesses oppose
14 ALLTEL's designation as an ETC. In an effort to create unnecessary confusion, delay
15 or merely to thwart ALLTEL's application, Ms. Bruns and Mr. Metts attempt to raise
16 various points that are not relevant to this proceeding. ALLTEL's application for
17 designation as an ETC is a straightforward request to be considered by this Commis-
18 sion under existing laws, rules, and procedures. The criteria to be employed in
19 examining the application have been laid out by the FCC (*see* 47 U.S.C. §
20 214(e)(1)) and ALLTEL meets those criteria. The questions to be answered are
21 relatively few: Is ALLTEL a common carrier? Does ALLTEL or will ALLTEL
22 advertise and offer the supported services as specified by the FCC throughout its
23 designated service area? And for service areas of the rural telecommunications
24 carriers, is it in the public interest to designate ALLTEL as an ETC?

1 **Q: Ms. Bruns and Mr. Metts suggest that this Commission should delay acting upon**
2 **ALLTEL's application until ongoing proceedings at the Joint Board and the**
3 **FCC are completed. [Bruns Direct, p. 5; Metts Direct, p. 23] Do you agree with**
4 **that recommendation?**

5 **A: No, I do not. Withholding approval because of changes that may or may not take**
6 **place at some future date is not in the public interest, would be inappropriate and**
7 **would delay the benefits that additional federal universal service ("FUSF") support to**
8 **Arizona will bring, including competitive choice, mobility, larger calling scopes and**
9 **improved network capability to Arizona consumers. The Michigan Public Service**
10 **Commission addressed this issue in its Order approving ALLTEL's ETC application**
11 **in that state.**

12 The Commission declines CenturyTel's and MCA's recommen-
13 dation to defer its determination of ALLTEL's application until
14 after the Federal-State Joint Board provides further clarity on ETC
15 designations. At this point, there is no time frame in which the
16 Joint Board will act. The Commission, however, has been urged
17 by the FCC to act upon ETC applications within 180 days and the
18 end of that period with respect to this application is fast
19 approaching. The Commission believes the better course of action
20 is to act upon ALLTEL's application within the desired timeframe
21 and take recommendations of the Federal-State Joint Board into
22 account when deciding future cases.

23 [September 11, 2003 Order of the Michigan Public Service Commission in Case No.
24 U-13765]

25 The Arkansas Public Service Commission reached the same conclusion in
26 approving ALLTEL's application for ETC designation in that state.

27 To the extent that the commenting parties have suggested that the
28 Commission delay its decision pending resolution of some of the
29 issues raised in the comments and currently pending or under
30 consideration in United States Congressional committees or before
31 the FCC's Joint Board, the request to delay would be inconsistent
32 with the requirements of 47 U.S.C. § 214(e)(2) which states that
33 the Commission "shall" grant the ETC request if the requirements
34

1 of the statute are met. Additionally, the issues raised by commen-
2 ting parties are best dealt with in the appropriate forums which
3 have the jurisdiction to effect any changes which might be deemed
4 necessary.

5 [Order of the Arkansas Public Service Commission, Docket No. 03-138-U, December
6 31, 2003]

7 Withholding approval of wireless ETC applications until the Joint Board and
8 the FCC complete their review and possible modifications is no more logical than
9 suggesting, which the parties have not done, that the Commission should suspend all
10 FUSF payments to existing ILEC ETCs until such review and modifications are
11 completed. The complete Orders of the Michigan and Arkansas Public Service
12 Commissions are included as "Attachment 1" and "Attachment 2" to this testimony.

13 **Q: Ms. Bruns suggests that ALLTEL should be held to the same service standards**
14 **as those imposed on ILEC ETCs. [Bruns Direct, p. 9] Would that be**
15 **appropriate?**

16 **A:** No it would not. ALECA argues that a wireless ETC should be held to all of the
17 same regulations that apply to ILEC. This argument confuses ETC requirements with
18 ILEC regulation. Specific regulations have been established and apply to ILECs in
19 the state and federal jurisdictions, while other specific regulations have been
20 established and apply to wireless carriers under existing law. Separate and apart from
21 these specific regulations, the Telecommunications Act of 1996 established require-
22 ments that all carriers must meet in order to be designated as an ETC. It is only these
23 specific ETC requirements that are the proper focus of this proceeding. ALECA's
24 attempt to create additional ETC requirements that would impose on ETCs existing
25 ILEC regulations is an effort to prevent non-ILECs from obtaining ETC designation.
26 This is inappropriate and ALECA should not be permitted to confuse the proper focus
27 of the Commission in this proceeding. FCC rules provide that wireless service
28 qualifies for ETC designation. Wireless service, and subsequently wireless ETC
29 service, was never intended to exactly replicate the service of an ILEC. There are
30 inherent differences between wireline and wireless service. Recognizing these

1 differences, the FCC established ETC criteria that can be met by a wireless provider.
2 These criteria provide the customer the benefit of competitive choice. There would
3 be no benefit from imposing regulations that result in the exact same services being
4 offered in exactly the same manner by all providers. The benefits of mobility and
5 enhanced local calling areas provide consumers a viable choice of service provider.

6 There is no requirement under existing federal law, rules, or guidelines that a
7 competitive ETC must offer the same service as an ILEC. This Commission,
8 similarly, declined to impose additional requirements in its Order designating Smith-
9 Bagley as an ETC. ALLTEL clearly has demonstrated in its application that it meets
10 the current FCC requirements. Wireless service is not by its nature exactly the same
11 as wireline service, nor should it be. The competitive benefit that will accrue to
12 customers from ALLTEL's designation as an ETC is not that they will have another
13 ILEC carrier to choose from for their communications needs, but rather that they will
14 have additional services to choose from as well as another choice of provider. Some
15 customers will value larger calling scopes and mobility more than equal access or
16 unlimited local usage. Expanded choices will become available in rural Arizona if
17 ALLTEL is designated as an ETC for FUSF and can use those funds to enhance its
18 network in rural Arizona.

19 **Q: On pages 9 and 10 of her Direct Testimony, Ms. Bruns offers suggestions that**
20 **the Commission should consider in evaluating the public interest. Do her**
21 **suggestions represent valid criteria?**

22 **A:** The criteria suggested by Ms. Bruns would merely impose ILEC standards on a
23 competitive ETC. The public interest is served by providing a competitive choice for
24 customers. Unlike the ILEC ETC, a competitive ETC's support is directly based on
25 the number of customers it serves. The competitive ETC must offer service and
26 pricing plans that are acceptable to its customers in order to receive FUSF support. It
27 is precisely this type of market defined competition that Congress envisioned when it
28 established the laws associated with the federal universal service fund. It is also why
29 the FCC established rules that made FUSF support portable among ETCs.

1 **Q: Mr. Metts voices a similar concern in advocating that the public interest should**
2 **require unlimited local usage. [Metts Direct, p. 13] Should unlimited local usage**
3 **be a measure of public interest?**

4 **A:** This suggestion is, again, an attempt to impose ILEC standards on a competitive ETC.
5 Ms. Bruns adopts a similar view in her discussion of ALLTEL's universal service
6 offering. [Bruns Direct, p. 13] There are certainly situations where a customer's
7 calling needs would be met by offering a statewide local calling area. ALLTEL's
8 service allows the customer to choose between time (the ILEC unlimited calling) or
9 distance (ALLTEL's expanded local calling area). It is this type of consideration that
10 the FCC took into account when establishing the basic ETC criteria.

11 **Q: Can you address Mr. Metts' reference to ALLTEL's response to the ALECA**
12 **data request concerning ALLTEL's lifeline service offering?**

13 **A:** ALLTEL has developed a plan for lifeline service subsequent to its response to
14 ALECA's data request. ALLTEL's lifeline service meets all federal guidelines. The
15 service will be made available throughout ALLTEL's ETC designated area. Eligibility
16 will be determined by participation in the food stamp program, Low Income Home
17 Energy Assistance Program ("LIHEAP"), Medicaid, Supplemental Security Income
18 ("SSI") or Federal Public Housing Assistance. The basic lifeline offering will include
19 200 minutes of usage per month within ALLTEL's local calling area (all of Arizona,
20 and parts of New Mexico and California). Initial plans call for a monthly rate of
21 \$21.70. Additionally, ALLTEL's lifeline plan will be consistent with the FCC's
22 Tribal Lands Order, whereby the monthly rate for lifeline service to customers living
23 on Tribal Lands will be \$1.00 per month, with eligibility criteria expanded consistent
24 with the Order to allow greater participation.

1 **Q: On page 15 of her Direct Testimony, Ms. Bruns questions whether ALLTEL is**
2 **lawfully terminating its customers' traffic to ALECA customers. Is this a**
3 **concern that should be addressed in this proceeding?**

4 **A:** No it is not. ALLTEL's interconnection agreement with Qwest provides for the
5 delivery and termination of traffic from ALLTEL's wireless customers through
6 Qwest's tandem offices to ILEC end offices. The determination to connect either
7 directly or indirectly with any ILEC is based on traffic considerations, and is unrelated
8 to ALLTEL's ETC designation. Ms. Bruns again is attempting to raise issues that are
9 not the subject of this proceeding.

10 **Q: Mr. Metts indicates that granting ETC status to ALLTEL would threaten**
11 **universal service in Arizona's rural exchanges because of the "alarming" growth**
12 **in the size of the federal USF. [Metts Direct, p. 15] Do you agree?**

13 **A:** No I do not. Concerns over growth in the federal high cost fund as the result of
14 designating additional ETCs is beyond the scope of this proceeding. The Joint Board
15 is in the process of evaluating this issue. When that process is complete, any changes
16 in ETC requirements will apply to all ETCs. Further, the "alarming growth" is
17 attributed far more to increases in draws from the FUSF by ILECs, than from the
18 designation of competitive ETCs. While Mr. Metts states that the end-user customer
19 surcharge has risen from 3.2% to 8.7% over the last five years, he also notes that the
20 amount drawn by competitive ETCs has risen to \$62M per quarter. Notwithstanding
21 the fact that this is totally unrelated to ALLTEL's application in this proceeding, the
22 large majority of federal USF support continues to go to ILECs. For the 4th quarter of
23 2002, all competitive ETCs (including wireless ETCs) received only about 7% of the
24 total FUSF disbursed to ETCs. The extensive growth in the FUSF to which Mr.
25 Metts refers was mainly the result of increased draws by the ILECs.

1 **Q: Mr. Metts is concerned that the redefinition of ILEC service areas would**
2 **substantially burden the rural ILECs. [Metts Direct, p. 20] Do you agree?**

3 **A:** I do not. Mr. Metts' concerns are with the potential cost of rural ILECs disaggre-
4 gating their study areas to determine costs at less than a study area level.
5 Disaggregation is often cited as a means to prevent "cream skimming" or targeting of
6 high cost areas by competitive ETCs. ALLTEL seeks a redefinition of ILEC study
7 areas for the sole purpose of allowing ALLTEL to receive its ETC designation
8 throughout ALLTEL's entire service area, not to target any specific portions of an
9 ILEC's service area. ALLTEL's ETC designation, and the subsequent redefinition of
10 the ILEC study areas, do not require that the ILECs disaggregate their study areas.

11 **Q: Can you please summarize your Rebuttal Testimony?**

12 **A.** The Direct Testimony of the ALECA witnesses attempts to unnecessarily complicate
13 and confuse this proceeding and delay the benefits that will accrue to Arizona
14 consumers following ALLTEL's designation as an ETC for FUSF in the areas
15 requested. Similar arguments have been rejected by other state commissions and
16 should be rejected by the Arizona Commission as well. ALLTEL's application for
17 ETC designation, its Direct Testimony filed in this proceeding, its responses to other
18 parties' data requests, and the recommendation filed by the Commission's Staff
19 provide all the information needed for this Commission to designate ALLTEL an
20 ETC in the areas requested.

21 **Q: Does this conclude your Rebuttal Testimony?**

22 **A:** Yes.

**MICHIGAN
ORDER**

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
ALLTEL COMMUNICATIONS, INC.,)	
for designation as an eligible telecommunications)	Case No. U-13765
carrier pursuant to Section 214(e)(2) of the)	
Communications Act of 1934.)	
_____)	

At the September 11, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On April 14, 2003, ALLTEL Communications, Inc., (ALLTEL) filed an application seeking designation as an eligible telecommunications carrier (ETC) under Sections 214(e)(2) and 214(e)(6) of the federal Communications Act of 1934, as amended, 47 USC 214(e)(2) and 214(e)(6) (federal Act) and Sections 201 and 203 of the Michigan Telecommunications Act, MCL 484.2101 et seq. (MTA). If granted, designation as an ETC would permit ALLTEL to receive universal service support in Michigan.

Several parties petitioned to participate in the proceeding. On May 6, 2003, the Commission Staff (Staff) filed a notice of appearance. On May 21, 2003, CenturyTel of Michigan, Inc.,

CenturyTel Midwest-Michigan, Inc., CenturyTel of Northern Michigan, Inc., and CenturyTel of Upper Michigan, Inc., (CenturyTel) jointly filed a petition to intervene. Also on May 21, 2003, Hiawatha Telephone Company, Chippewa County Telephone Company, Midway Telephone Company, and Ontonagon County Telephone Company (Hiawatha) jointly petitioned to intervene. The Michigan Exchange Carriers Association, Inc., (MECA), a voluntary association of 33 small incumbent local exchange carriers (ILECs) in Michigan, also filed a petition. On May 28, 2003, AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T) filed a notice of intent to participate.

On May 28, 2003, a pre-hearing conference was conducted by Administrative Law Judge Mark E. Cummins (ALJ). ALLTEL, CenturyTel, MECA, AT&T, and the Staff attended. The ALJ granted the petitions to intervene and ordered the parties to file their direct testimony by June 10, 2003 and rebuttal testimony by June 23, 2003. Cross-examination of witnesses was to take place on July 7, 2003,¹ with a briefing schedule to be determined thereafter. In order to meet the 180-day Federal Communications Commission (FCC) guideline for state commissions to act on ETC applications, the Commission agreed to read the record in this proceeding.

Several parties filed testimony. ALLTEL filed the direct and rebuttal testimony of Lawrence J. Krajci, its Staff Manager of State Government Affairs. CenturyTel filed the direct and rebuttal testimony of Ted M. Hankins, its Director of State Government Relations. MECA filed the direct and rebuttal testimony of Robert W. Orent, President and CEO of Hiawatha Communications, Inc. The Staff filed the direct testimony of Daniel J. Kearney, Supervisor of the Operations Section of the Commission's Telecommunications Division.

¹ This date was later moved to July 8, 2003.

On July 8, 2003, the ALJ conducted an evidentiary hearing. All testimony was bound into the record by stipulation of the parties and cross-examination of witnesses was waived. ALLTEL, CenturyTel, MECA, and the Staff filed briefs and reply briefs on July 23 and August 1, 2003, respectively.

On July 25, 2003, ALLTEL filed a motion to strike portions of CenturyTel's reply brief. ALLTEL contends that CenturyTel inappropriately raised arguments for the first time in its reply brief, thereby preventing ALLTEL an opportunity to respond.

II.

POSITIONS OF THE PARTIES

There are two issues in this proceeding. First is whether ALLTEL should be designated as an ETC for purposes of receiving universal service support. Second, if ALLTEL is granted ETC status by the Commission, for what service area(s) should ALLTEL's status be granted.

ALLTEL

ALLTEL argues that it meets the requirements for ETC designation under the federal Act. ALLTEL states that it meets all the statutory and regulatory prerequisites for ETC designation and that designating ALLTEL as an ETC will serve the public interest. ALLTEL represents that once it receives its ETC designation, it plans to use the funding to speed the delivery of advanced wireless services to its customers. As an ETC, ALLTEL states that it will offer a basic universal service package to customers who are eligible for Lifeline and will provide service to any customer requesting service within its designated service area. ALLTEL further avers that it provides all the services supported by universal service mechanisms. ALLTEL says that it will

advertise the availability of the supported services and charges in a way that fully informs the general public throughout its designated service area.

ALLTEL argues that its application is in the public interest. ALLTEL asserts that granting it ETC status will help bring meaningful choice to Michigan customers who have few, if any, choices for local exchange service. ALLTEL further asserts that its ETC status will bring the benefits of competition to customers, increase choices, and lower rates. ALLTEL further notes that the FCC has determined that wireless providers may be designated as ETCs.² ALLTEL claims that its customers will benefit from having an expanded local calling area, making intrastate toll calls more affordable.

ALLTEL also requests that the Commission establish its service area for purposes of determining universal service support. ALLTEL specifically requests that it be granted ETC status for its entire licensed service area in Michigan. Attached to its application are exhibits that identify each of the requested areas by wire center. Where ALLTEL serves only a portion of a wire center, it requests ETC designation in that portion of the wire center where it provides service. For certain rural areas, ALLTEL requests that the Commission redefine the service area of several ILECs because ALLTEL only serves a portion of the ILECs' service areas.

CenturyTel

CenturyTel argues that ALLTEL's application must be denied. CenturyTel believes that ALLTEL's application does not meet the requirements for the granting of ETC status under

² See, ALLTEL application, p. 9, citing, *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCCR 8776, 8858-59, ¶¶ 145-47 (1997).

Section 214(e), because granting ETC status to ALLTEL would not be in the public interest.³

CenturyTel asserts that ALLTEL has been successful at providing service without the need for universal service support. It argues that giving ALLTEL universal service funds would give ALLTEL an unearned windfall, would work to increase charges for Michigan customers, and will ultimately jeopardize the universal service support mechanism altogether.

CenturyTel claims that ALLTEL should not be granted ETC status because, as a wireless carrier, ALLTEL's costs are unrelated to landline costs from which universal service support is derived. CenturyTel also asserts that it is held to higher service standards and regulatory obligations than wireless carriers, which result in higher operating costs for CenturyTel. CenturyTel specifically objects to the fact that ALLTEL has lower costs than CenturyTel, but would receive the same universal service support. CenturyTel argues that granting ALLTEL ETC status would create an uneven playing field, biased against higher cost providers, and could actually reduce competition.

CenturyTel also expressed concern over the fact that wireless carriers are not subject to the same regulatory oversight as incumbent carriers. CenturyTel contends that while wireless carriers are seeking support from a regulatory cost recovery mechanism, the Commission has no regulatory oversight over these carriers to ensure that the monies are used to advance universal service. CenturyTel contends that this uneven playing field, and the fact that the benefits of granting wireless carriers ETC status do not exceed the costs, means that granting ALLTEL's application would not be in the public interest.

³ In its reply brief, CenturyTel also asserts that ALLTEL's application is insufficient because ALLTEL does not provide "local usage" as required by federal law. CenturyTel's argument suggests that all wireless carriers in Michigan cannot meet the federal requirement because of the exclusion of mobile service from basic local exchange service. This Commission, however, has previously granted ETC status to several wireless carriers.

CenturyTel also believes that it would be premature for the Commission to grant any ETC applications while the FCC is in the process of considering new rules for the granting of ETC status to competitive carriers.⁴ CenturyTel suggests waiting until the FCC makes its pronouncements regarding any changes.

Furthermore, if the Commission decides to grant ALLTEL's application, then CenturyTel requests that ALLTEL's ETC status be conditioned on ALLTEL's compliance with regulatory safeguards to ensure a level competitive playing field with rural providers. CenturyTel also argues that allowing ALLTEL to have ETC status in only a portion of a rural ILEC's service area is contrary to the public interest, and that the Commission should not redefine CenturyTel's rural ILEC service area.

Hiawatha

Hiawatha believes that ALLTEL's application does not satisfy the requirements of granting ETC status and therefore should be denied. Hiawatha asserts that it provides rural telecommunications services and would be economically harmed if ALLTEL's application were granted. Hiawatha believes that universal service support is a scarce resource that is jeopardized by granting ETC status to providers like ALLTEL whose lower costs do not justify receiving the same level of support as rural carriers. Hiawatha also believes that granting ALLTEL ETC status would create an uneven competitive playing field for rural carriers. Hiawatha claims that wireless carriers given ETC status should be subject to the same service quality and reporting requirements as ILECs. Hiawatha also believes that ALLTEL should be required to serve the same areas as the ILECs and that the Commission should not redefine Hiawatha's service areas. Hiawatha also

⁴ See, Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (February 7, 2003).

contends that in order for ALLTEL's application to satisfy the public interest requirement, ALLTEL should have to demonstrate that the benefits of supporting multiple networks outweigh the cost of supporting multiple networks.

MECA

MECA also opposes ALLTEL's application for designation as an ETC. MECA asserts that it and its members, many of whom provide service to rural areas of the state, will suffer from a loss of universal service support. MECA asserts that a loss of universal service funds will affect small rural telecommunications providers' ability to maintain and invest in the infrastructure needed to serve high-cost areas.

MECA argues that ALLTEL's application cannot be granted unless granting the application is in the public interest. MECA asserts that merely providing all universal service supported services does not mean that an applicant's application is in the public interest. MECA alleges that the further public interest finding should be based upon universal service purposes and principles. MECA asserts that Congress, in placing this added requirement, did not believe that the public interest would always be served by encouraging competition in rural areas.

MECA claims that Congress did not intend universal service support to be a subsidy program. Rather, MECA argues, Congress intended universal service support to provide for cost recovery in order to promote infrastructure investment in high-cost rural areas where providing the same quality service at affordable rates comparable to urban areas is not suitable for carriers. MECA argues that without this support, high-cost investment would not have occurred in the past and will not occur in the future. MECA sees infrastructure investment as the primary goal of the universal service program.

MECA argues that the only providers of high quality, facilities-based services throughout their respective service areas are the rural ILECs. MECA claims that once a rural ILEC loses the ability or incentive to continue investing in its network, then rural areas may be deprived of affordable, high quality telecommunications services. MECA asserts that lack of sufficient funding will also affect the deployment of advanced services to consumers, such as schools, libraries, and health care facilities.

Consequently, the granting of ETC status to competitive carriers in areas served by rural carriers, MECA contends, must be properly managed to foster the goals of the federal Act. MECA claims that if the overall demand for funding grows to an unsustainable level, then support payments will be frozen or curtailed, resulting in serious operating issues for many rural telephone companies. MECA claims that this would result in reductions in service quality, higher rates, and perhaps even financial failure of rural companies that serve as the "lifeline" for many remote customers. MECA argues that the proliferation of "uneconomic competition" in rural areas could jeopardize rural telecommunications services altogether.

MECA also asserts that state commissions have placed far too great an emphasis on the benefits of competition when deciding ETC applications for rural service areas. MECA claims that subsidized competition does not serve the public interest. MECA believes that this over-emphasis has been to the detriment of ensuring that all consumers will retain and gain access to high quality, affordable telecommunications services, including advanced services, on a comparable basis to those available in urban areas. Because of this, MECA believes that the Commission must establish a set of principles to guide its decisions on ETC applications affecting rural areas.

To assist the Commission in establishing this set of principles, MECA offers its own. First, rural consumers should receive access to affordable, high quality telecommunications and information services, including advanced services that are reasonably comparable to those in urban areas and at reasonably comparable prices. Second, high-cost support should not be used as an incentive for uneconomic competition in areas served by rural carriers. Third, universal service funds are a scarce national resource that telephone companies must carefully manage to serve the public interest. Fourth, rural universal service support reflects the difference between the cost of serving high-cost rural areas and the rate levels mandated by policymakers. Fifth, the public interest is served only when the benefits from supporting multiple carriers exceed the costs of supporting multiple networks. Sixth, in areas where costs of supporting multiple networks exceed the public benefits from supporting multiple carriers, the public interest dictates providing support to a single carrier that provides critical telecommunications infrastructure. Seventh, the cost of market failure in high-cost rural Michigan could be severe.

In addition to the guiding set of public interest principles, MECA believes the Commission should create a standard set of minimum qualifications, requirements, and policies to be applied when considering ETC applications for rural service areas. MECA believes that using such a template would help the Commission determine whether the public interest would be served by granting an application. MECA also asserts that such a guideline would improve the long-term viability of the universal service fund because it believes only the most qualified carriers that are capable of, and committed to, being "true providers" of universal service should receive the ETC designation.

To assist the Commission, MECA offers the following qualifications and requirements that it believes the Commission should adopt when considering ETC applications: 1) A carrier must

demonstrate its ability and willingness to provide all supported services throughout the service area. 2) To fulfill the advertising requirement, an ETC must emphasize its universal service obligation to offer service to all consumers in the service area. 3) A carrier must have formal arrangements in place to provide service where facilities have yet to be built. 4) A carrier must have a plan for building out its network once it receives ETC status and must make demonstrative progress toward achieving its plan to retain its status. 5) A carrier must demonstrate that it is financially stable.

In addition to public interest principles, and minimum qualifications and requirements, MECA urges adoption of the following policies that it believes the Commission should adhere to when reviewing ETC applications involving rural areas: 1) ETC designations in rural areas should be made at the study area level (an ILEC's entire service territory within one state). 2) The Commission should ensure that competitive ETCs will be capable of providing high-quality service to all customers in the service area should the rural ILEC find it necessary to relinquish its own ETC designation. 3) Any service quality standards, reporting requirements, and customer billing requirements established by the Commission should apply equally to all ETCs in the state. 4) The Commission should retain the authority to decertify any ETC that is not meeting any of the Commission's qualifications and requirements.

In short, MECA does not believe that granting ALLTEL's application would be in the public interest. MECA also supports deferring the decision on ALLTEL's application until the Federal-State Joint Board clarifies the process for designating ETCs.

Staff

The Staff's testimony references background material that it believes will assist the Commission in determining whether granting ALLTEL's application would be in the public

interest. In so doing, the Staff directs attention to portions of the MTA and the federal Act that support the development and the use of competition to make available quality telecommunications services at prices that are just, reasonable, and affordable even in rural, high-cost areas. The Staff also presents a number of questions for the Commission's reflection. The Staff would like more guidance as to the definition of "public interest." The Staff suggests that healthy competition is the most significant factor in a public interest analysis, followed closely by choice and reasonable rates. In the end, the Staff sees no reason to further delay or deny ALLTEL's ETC designation.

III.

DISCUSSION

ETC Designation

Pursuant to 47 USC 214(e)(2), the Commission may designate more than one carrier in a rural area as an ETC if the Commission finds doing so consistent with the public interest, convenience, and necessity. The parties to this proceeding opposing ALLTEL's application argue that granting ALLTEL's application is not in the public interest. The Commission disagrees. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. In this case, designating ALLTEL as an ETC is in the public interest because it is likely to promote competition and provide benefits to customers in rural and high-cost areas by increasing customer choice, while promoting innovative services and new technologies, and encouraging affordable telecommunications services. Further, ALLTEL provides service where there are few, if any, competitive local exchange carriers.

The Commission disagrees with the significance of the numerous arguments advanced by the opposing parties. To the extent that the opposing parties claim that wireless service is inferior to landline service, the Commission responds that customers should not be denied an opportunity to

determine which of these services best meets their needs. In response to the argument that wireless service providers are not subject to the same regulations designed to protect customers, the Commission finds sufficient protection for customers in their right to choose not to use wireless service and to choose from whom to take service. To the extent that the opposing parties are concerned about the effects on themselves of competition from wireless carriers, the Commission does not agree that the public interest requires that they be protected from competition. Moreover, concerns over the effects of competition on the universal service mechanism are better addressed by the FCC, which is responsible for disbursing the federal universal service funds.

There is ample precedent in support of a wireless carrier's designation of ETC status. On at least three prior occasions, this Commission has granted ETC status to wireless carriers.⁵ In addition, numerous ETC proceedings involving competitive carriers, including wireless carriers, have taken place at the FCC and before other state commissions with the competitive carrier ultimately being granted ETC status.⁶ The Commission provided parties an opportunity to voice their concern about the granting of ETC status to a wireless carrier by conducting an evidentiary hearing. Virtually every argument raised by the parties in opposition to ALLTEL's application, however, has been addressed previously. No new information was brought to the Commission's

⁵ See, the August 26, 2003 order in Case No. U-13714, the November 20, 2001 order in Case No. U-13145, and the December 6, 2002 order in Case No. U-13618.

⁶ See, e.g., *RCC Minnesota, Inc. et. al. Request for Designation as Eligible Telecommunications Carrier*, Order, Maine Public Utilities Commission Docket No. 2002-344 (May 13, 2003); *In the Matter of Federal State Joint Board on Universal Service Cellular South License Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3317 (rel. Dec. 4, 2002); *In the Matter of Federal State Joint Board on Universal Service RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181 (rel. Nov. 2, 2002).

attention that would persuade the Commission that designating a competitive carrier as an ETC in an area served by a rural ILEC would be contrary to the public interest.

Furthermore, the Legislature has decided that the Commission should not regulate wireless service. For that reason, the Commission must also decline to adopt the conditions proposed, such as requiring ALLTEL to assume carrier of last resort responsibilities, which would require that the Commission regulate wireless service. Consistent with prior designations, however, the Commission reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes.

The Commission declines CenturyTel's and MECA's recommendation to defer its determination on ALLTEL's application until after the Federal-State Joint Board provides further clarity on ETC designations. At this point, there is no time frame in which the Joint Board will act. The Commission, however, has been urged by the FCC to act upon ETC applications within 180 days and the end of that period with respect to this application is fast approaching. The Commission believes the better course of action is to act upon ALLTEL's application within the desired timeframe and take recommendations of the Federal-State Joint Board into account when deciding future cases.

Service Area

ALLTEL also requests that the Commission establish a "service area" for purposes of determining universal service support. The federal Act defines the term "service area" to be a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." 47 USC 214(e)(5). As stated above, ALLTEL requests that its licensed service area be the designated service area for universal service support.

Additionally, ALLTEL requests that the Commission redefine the service areas of rural ILECs where it cannot provide service to the entire service area of these companies.

CenturyTel, Hiawatha, and MECA oppose ALLTEL's service area proposal. They argue that ALLTEL must serve the same service area as the rural ILEC. CenturyTel contends that redefining a rural carrier's service area acts as a disincentive for an additional ETC to serve the most rural parts of a relevant study area. CenturyTel contends that the goal of universal service would be better served by requiring "ETCs to expand their horizons." CenturyTel Brief, p. 17. CenturyTel is also concerned that if additional ETCs are not required to serve a rural ILEC's entire study area, then there is a greater risk of "cream-skimming," where the additional ETC can choose to provide service to lower cost customers without being subject to providing service to attendant higher cost customers while receiving the same level of universal service support as the rural ILEC. MECA also raises concerns about what it described as significant administrative burdens for an ILEC as a result of study area changes. MECA describes how an ILEC's accounting and auditing procedures are built around their existing study areas.

The Commission appreciates the concerns raised by CenturyTel, Hiawatha, and MECA, but declines to accept the proposal that the wireless carrier's service area should encompass the ILEC's entire study area. In granting ETC status to RFB Cellular, Thumb Cellular, and NPI-Omnipoint Wireless, LLC, the Commission did not require the wireless carrier to provide service to the entire study area of the rural ILEC.

The Commission, however, also has concerns with ALLTEL's proposal to redefine the service areas of certain ILECs. The study areas of rural ILECs have existed for many years and many accounting and other administrative tasks are based upon those study areas.

The Commission is also sensitive to the "cream-skimming" issues that could exist if every ETC applicant is able to carefully craft its own desired service area. Consequently, the Commission has decided to delineate service areas for purposes of universal service support by exchanges. In so doing, the Commission finds that the "cream-skimming" concerns are alleviated because ALLTEL has not specifically picked the areas in which it will serve, but instead the areas were defined in the FCC's wireless licensing process. Additionally, exchanges tend to encompass many types of customers, including rural and high-cost customers. The Commission is persuaded that ALLTEL is not targeting any specific area or that serving any of the partial study areas would result in a windfall due to service to a highly-populated area. Much of the area covered by ALLTEL's wireless carrier license is in very rural parts of Michigan. The Commission is also convinced that designating service areas utilizing entire exchanges will minimize the administrative burden on rural telephone companies to calculate costs at something other than a study area level. This approach will require affected ILECs to disaggregate into service areas that are coterminous with existing telecommunications boundaries for which costs are already calculated.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. ALLTEL should be designated as an ETC for the purpose of receiving federal universal service funds.
- c. ALLTEL's designation as an ETC is in the public interest.

d. ALLTEL's service area for purposes of determining universal service obligations and support mechanisms should be coterminous with established exchanges.

e. ALLTEL should be directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.

f. The granting of ALLTEL's ETC status should be conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

g. ALLTEL's ETC designation should be subject to the annual Commission re-certification process. ALLTEL should be directed to contact the Staff regarding the 2004 re-certification process prior to September 17, 2003.

h. ALLTEL's August 25, 2003 motion to strike should be denied.

THEREFORE, IT IS ORDERED that:

A. ALLTEL Communications, Inc., is designated an eligible telecommunications carrier for the purpose of receiving federal universal service funds.

B. ALLTEL Communications, Inc.'s, service area for purposes of determining universal service obligations and support mechanisms is to be coterminous with established exchanges.

C. ALLTEL Communications, Inc., is directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.

D. ALLTEL Communications, Inc.'s, eligible telecommunications carrier designation is conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

E. ALLTEL Communications, Inc.'s eligible telecommunications carrier designation is subject to the annual Commission re-certification process. ALLTEL is directed to contact the Commission Staff regarding the 2004 re-certification process prior to September 17, 2003.

F. ALLTEL Communications, Inc.'s August 25, 2003 motion to strike is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of September 11, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

**ARKANSAS
ORDER**

Dec 31 12 03 PM '03

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF)
 ALLTEL COMMUNICATIONS, INC. FOR)
 DESIGNATION AS AN ELIGIBLE)
 TELECOMMUNICATIONS CARRIER PURSUANT)
 TO SECTION 214(e)(2) OF THE)
 COMMUNICATIONS ACT OF 1934)

FILED
 DOCKET NO. 03-138-U
 ORDER NO. 5

ORDER

On August 14, 2003, ALLTEL Communications, Inc. ("ALLTEL") filed an application for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to § 214(e)(2) of the Communications Act of 1934, as amended¹. ALLTEL seeks ETC designation for Federal Universal Service Fund ("USF") support throughout its licensed service areas in the State of Arkansas in wire centers served by SBC²; CenturyTel of Northwest Arkansas, LLC; and CenturyTel of Central Arkansas, LLC (together "CenturyTel"). ALLTEL provides Commercial Mobile Radiotelephone Service ("CMRS")³ in Arkansas Cellular Market Areas ("CMAs") 92 (Little Rock/North Little Rock), 165 (Fort Smith), 182 (Fayetteville/Springdale), 291 (Pine Bluff), and Arkansas Rural Service Areas ("RSAs") 1-12 (CMAs 324-331). ALLTEL proposes to advertise and provide the USF supported services designated in 47 U.S.C. § 214(e)(6). In support of its application ALLTEL has submitted the affidavit of Steve R. Mowery, Vice President, State Government Affairs for ALLTEL, certifying that ALLTEL will advertise and provide the required services. In accordance with Order No. 3 of this docket comments were

¹ 47 U.S.C. § 214(e)(6).

² Referring to Southwestern Bell Telephone LP.

³ Also referred to as wireless or cellular service.

filed on October 3, 2003 by three groups of incumbent local exchange carriers ("ILECS")⁴, and reply comments were filed by ALLTEL on October 10, 2003. In accordance with Order No. 4 of this docket, a hearing was held on November 5, 2003 and post hearing briefs were filed on November 26, 2003.

The rural ILECs argue that if ALLTEL takes a customer from an ILEC, the rural ILECs will lose terminating access charges which would have been paid to rural ILECs for terminating the toll calls of the customer taken by ALLTEL. The rural ILECs acknowledge that ALLTEL would pay terminating access charges to rural ILECs for termination of toll calls from ALLTEL customers, however, the rural ILECs assert that the terminating access rates paid by wireless carriers are substantially less than those paid by other ILECs or interexchange carriers ("IXCs"), and the resulting reduction in access charges paid to the rural ILECs could affect their profitability. The rural ILECs also assert that some ILECs have no agreement with CMRS carriers for termination of minutes and receive no revenue from CMRS carriers, including ALLTEL. The rural ILECs state that, "As wireless carriers capture market share in Arkansas, the revenue of each of the ILECs decline as traffic is moved from ILEC to ILEC or IXC to ILEC to CMRS to ILEC."⁵ However, the rural ILECs also state that, "Even if Alltel Wireless is not an

⁴ The commenting parties are three groups of ILECS which will be referred to as (1) "the rural ILECS", which consist of Arkansas Telephone Company, Inc.; Central Arkansas Telephone Cooperative, Inc.; Madison County Telephone Company; Magazine Telephone Company; Northern Arkansas Telephone Co.; Pinnacle Communications; Prairie Grove Telephone Company; Rice Belt Telephone Company; South Arkansas Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Walnut Hill Telephone Company; and Yell County Telephone Company (2) "the Ritter companies", which consist of Ritter Communications Holdings, Inc. on behalf of its wholly owned subsidiaries Ritter Telephone Company and Tri-County Telephone Company, along with Yelcot Telephone Company and Mountain View Telephone Company and (3) "the CenturyTel companies" which consist of CenturyTel of Central Arkansas, LLC; CenturyTel of Northwest Arkansas, LLC; CenturyTel of Arkansas, Inc.; CenturyTel of Mountain Home, Inc.; CenturyTel of Redfield, Inc.; CenturyTel of South Arkansas, Inc.; Cleveland County Telephone Company, Inc.; and Decatur Telephone Company, Inc.

⁵ Initial Comments of Various Rural ILECs, p. 2, filed Oct. 3, 2003.

ETC in the Rural ILECs' area the loss of revenue occurs."⁶ The rural ILECs argue that wireless carriers offering of toll minutes in wireless plans could require the rural ILECS to expend money to carry the additional traffic volume, further detracting from their profitability, and that wireless carriers are essentially unregulated in Arkansas and do not provide their customers with the protections provided in the Arkansas Public Service Commission ("APSC" or "this Commission") Telecommunications Provider Rules because wireless carriers are not subject to those rules. The rural ILECs argue that because wireless carriers are not subject to the APSC's Telecommunications Provider Rules, and an ETC designation could result in lost toll or access revenues, and an ETC designation would require additional USF funding, it is not in the public interest to approve ALLTEL's ETC request.

The Ritter companies assert that granting ETC status to ALLTEL could detrimentally effect the USF, because the USF is funded by assessments on telecommunications providers' interstate revenue and as the size of the USF grows, as a result of commercial mobile radio service providers receiving ETC status, the customers of the Ritter companies will be charged increasing amounts to fund the USF and will receive no demonstrable benefit.

The Ritter companies also argue that CMRS providers are not subject to the same quality of service standards as ILECs and are not required to serve as a provider of last resort. The Ritter companies assert that the lack of these protections for ALLTEL's customers leads to the conclusion that ALLTEL's designation as an ETC is not in the public interest.

The Ritter companies' comments also point to the continuing activity by the Federal-State Joint Board on Universal Service ("Joint Board") and the United States House of Representatives Energy and Commerce Committee which are reviewing the operations of the

⁶ Id.

USF. The Ritter companies suggest that this Commission wait until the Joint Board and Congress have completed their reviews of the USF and make any necessary changes before granting ETC status to ALLTEL. The Ritter companies also question how ALLTEL will determine whether customers in certain exchanges are in fact CenturyTel or SBC customers, or Ritter customers, since Ritter has customers who have mailing addresses in towns with wire centers served by CenturyTel or SBC.⁷

The CenturyTel companies also raise many of the issues that are currently under review by the Joint Board, arguing that the availability of affordable high quality telephone services to consumers is at risk because of the ever-increasing demands on the USF from new carriers being granted ETC status. The CenturyTel companies request that the APSC deny the ETC request and initiate a generic proceeding to examine the policy and factual issues presented by the application or delay any decision until the Joint Board reports its findings regarding the USF to the Federal Communications Commission ("FCC"). The CenturyTel companies refer to the "spiraling" demands on the USF caused by the influx of ETC applications asserting that ALLTEL does not need USF support to be competitive and that granting ETC status to carriers that do not need USF support places the USF at risk.

The CenturyTel companies also argue that, when a carrier like ALLTEL receives an ETC designation, it can increase its revenues through USF support funds regardless of whether it adds any additional customers or obtains any customers from the ILEC serving the same area. CenturyTel suggests that this ability to artificially inflate revenues through Federal USF support when it cannot be shown that the revenues are needed is contrary to the public interest.

⁷ Comments of Ritter Communications, ¶ 8, filed Oct. 3, 2003.

The CenturyTel companies claim that ALLTEL has not shown that it is able to provide service in the entire study area of the effected ILECs, that ALLTEL is not required to serve as a carrier of last resort and is not subject to the APSC's Telecommunications Provider Rules. CenturyTel therefore asserts that it is not in the public interest to grant the ETC request.

ALLTEL's response to the comments filed by the ILECs asserts that it has met all of the criteria set forth in the Federal Act regarding ETC designation. ALLTEL emphasizes that differences in the manner in which ILECs and CMRS providers are regulated does not effect the specific requirements of the Federal Act regarding ETC designation.

Concerning the comments on how ALLTEL will determine a customer's location, Alltel notes that 47 C.F.R. § 54.307 requires that "Carriers providing wireless mobile service in an incumbent LEC's service shall use the customer's billing address for purposes of identifying the service location of a wireless customer in a service area." ALLTEL argues that it must comply with the cited provision and the argument against using that methodology therefore lacks merit.

ALLTEL also asserts that it is inappropriate to wait until a decision of the FCC or a congressional committee which may or may not take place at some future date, and that the benefits of competitive choice, mobility, larger calling scopes and improved network capability to Arkansas consumers provide sufficient benefits to determine that granting the ETC request is in the public interest.

Although the comments raise significant public policy issues, those issues are properly being addressed at the Congressional level and at the Federal Communications Commission. To the extent comments raise public policy issues such as the potential expansion of the Federal Universal Service Fund, these matters of public policy should be addressed at the Federal level and should not effect this Commission's decision in this case for two reasons.

First, this Commission has no jurisdiction to make changes in the Federal USF or the laws under which the Federal USF is established, and, second, this Commission is obliged to follow the requirements of Arkansas law which require this Commission to act consistently with the Federal Act. A.C.A. § 23-17-405 provides that the Commission may designate other telecommunications providers to be eligible for high-cost support consistent with 47 U.S.C. § 214(e) (2). This grant of authority to the Commission is conditioned on the telecommunications provider accepting responsibility to provide service to all customers in the ILEC's local exchange area through its own facilities or a combination of facilities, and the support will not begin until the telecommunications provider has the facilities in place to serve the area. The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains, the telecommunications provider must advertise the availability and charges for its services, and the Commission must determine that the designation is in the public interest.

There are essentially two issues presented in this docket. The first issue concerns ALLTEL's application for ETC status in areas served by SBC, a non-rural telephone company. The second issue concerns ALLTEL's request for ETC designation in the CenturyTel areas. CenturyTel is a rural telephone company as that term is used in 47 U.S.C. § 214(e)(6). Both CenturyTel and SBC are Tier 1 companies as that term is defined at A.C.A. § 23-17-403(26)(A) and used at A.C.A. § 23-17-405(d)(1).

A.C.A. § 23-17-405(b) states that this Commission may designate other telecommunications providers to be eligible for high-cost support, except in areas served by a rural telephone company, consistent with 47 U.S.C. § 214(e)(2). A.C.A. § 23-17-405 (d)(1) requires that, "For the entire area served by a rural telephone company, excluding tier one companies . . . there shall be only one (1) eligible telecommunications carrier. . ." Since both

SBC and CenturyTel are Tier 1 carriers, the single carrier requirement of A.C.A. § 23-17-405 (d)(1) is inapplicable and the issues are governed by the provisions of §23-17-405 (d)(1) which requires consistency with 47 U.S.C. §214(e)(2).

47 U.S.C. § 214(e)(2) states that:

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State Commission. Upon request and consistent with the public interest, convenience, and necessity, the State Commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State Commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State Commission shall find that the designation is in the public interest.

(Emphasis added).

To the extent that ALLTEL seeks ETC designation in an area served by a non-rural telephone company, Section 214(e)(2) clearly directs the Commission to designate more than one common carrier as an ETC if the requirements of paragraph (1) are met. Sections 214 (e)(1)(A) and (B) require that the carrier seeking ETC status must "offer the services that are supported by Federal Universal Service support mechanisms under § 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and advertise the availability of such services and the charges therefore using media of general distribution. The affidavit submitted by ALLTEL clearly indicates that ALLTEL has, or upon receiving ETC designation will, offer the services required and advertise the availability of those

services in compliance with § 214(e)(1) and § 254(c) thereby meeting the requirements of § 214(e)(2) of the Federal Act.

The comments suggest that an ETC should provide service to all customers in an ILEC's area. It should be noted that even the ILECs do not have the facilities in place to serve all customers, particularly those in remote areas, of their allocated territories. This fact was clearly recognized by the Arkansas Legislature in adopting an extension of facilities fund to extend telecommunications facilities to unserved customers.⁸ The FCC has also addressed this argument stating:

We believe that interpreting section 214(e)(1) to require the provision of service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of section 253 (a) of the Act. We find that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, and necessary to preserve and advance universal service, and thus does not fall within the authority reserved to the states in section 253(b). In addition, we find that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254. Consequently, under both the authority of section 253(d) and traditional federal preemption authority, we find that to require the provision of service throughout the service area prior to designation effectively precludes designation of new entrants as ETCs in violation of the intent of Congress.⁹

A.C.A § 23-17-405 requires this Commission to act in a manner which is "consistent with § 214(e)(2) of the Federal Act . . ." FCC precedent holds that the fact that ALLTEL has agreed to comply with § 214(e) in obtaining ETC designation in an area served by a non-rural carrier is sufficient to determine that granting ETC status is consistent *per se* with the public interest. *In the Matter of Federal-State Joint Board on Universal Service; Farmer's Cellular Telephone, Inc.*

⁸ Act 1771 of 2001, A.C.A. § 23-17-404 (e)(7).

⁹ In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, ¶ 2, CC Docket No. 96-45, adopted July 11, 2000, FCC 00-248.

Petition for Designation as an Eligible Telecommunications Carrier, 18 FCC Rcd 3848 (released March 12, 2003); *Cellco Partnership d/b/a Bell Atlantic Mobile Petitioned for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, ¶ 14 (2000); *Pine Belt Cellular and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 17 Rcd 9589, ¶ 13 (2002).

In adopting the Telecommunications Regulatory Reform Act of 1997(A.C.A § 23-17-401 *et seq.*), the General Assembly stated that its intent was to provide for a system of regulation, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms. Many of the objections made to the granting of ETC status by the commenting parties suggest that the granting of ETC status could affect the profitability of those companies and possibly result in rate increases to their customers. They therefore argue that it is not in the public interest and is inconsistent with Arkansas law to approve the ETC request. This argument ignores the statutory intent to implement competition, which will obviously have an affect on the profitability of some companies, but will also provide competitive alternatives to customers. If the ILECs receive reduced terminating access charges from the contracts they have negotiated with wireless carriers, they should receive the benefit of paying reduced access charges for terminating their calls to the wireless networks. Additionally, the terminating access rates paid between ILECs and wireless carriers are negotiated rates which the ILECs have agreed to pay. The contracts between the ILECs and wireless carriers should not, therefore, provide a basis to deny ETC status to a wireless carrier.

The suggestion by the ILECs that granting ETC status could affect their profits and their customers' rates does not suggest that granting ETC status is not in the public interest. The

granting of ETC status to ALLTEL will provide a competitive alternative for customers in the area in which ALLTEL seeks to provide service. The effect on the ILECs in Arkansas, resulting from the funding of the USF through assessments on all carriers' interstate services, is essentially the same regardless of whether an ETC request is granted in Arkansas or by another state commission. There will be some effect on amounts paid by Arkansas ILECs, since all carriers' interstate revenues are assessed to support the USF; however, denying the request would prohibit a group of Arkansas consumers from having the competitive alternatives available to customers in other states even though those Arkansas consumers would be indirectly paying for the benefits to customers in other states through payments for interstate services which originate or terminate in Arkansas.

To the extent that the commenting parties have suggested that the Commission delay its decision pending resolution of some of the issues raised in the comments and currently pending or under consideration in United States Congressional committees or before the FCC's Joint Board, the request to delay would be inconsistent with the requirements of 47 U.S.C. § 214 (e)(2) which states that the Commission "shall" grant the ETC request if the requirements of the statute are met. Additionally, the issues raised by the commenting parties are best dealt with in the appropriate forums which have the jurisdiction to effect any changes which might be deemed necessary.

The commenting parties also argue that the ETC designation, if granted, should be conditioned on ALLTEL's agreement to submit to this Commission's jurisdiction for enforcement of the Commission's Telecommunications Provider Rules. This recommendation appears to be inconsistent with the requirements of A.C.A § 23-17-411(g), which substantially limits the Commission's jurisdiction over commercial mobile radio services. The

recommendation also lacks support under § 214(e) which requires the Commission to grant ETC status if the conditions set forth in the statute are met. In construing §214 (e) the FCC has stated:

We conclude that section 214 (e)(2) does not permit the Commission or the states to adopt additional criteria for designation as an eligible telecommunications carrier. As noted by the Joint Board, "[s]ection 214 contemplates that any telecommunications carrier that meets the eligibility criteria of section 214 (e)(1) *shall* be eligible to receive universal service support." Section 214 (e)(2) states that "[a] state commission *shall* . . . designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier Section 214(e)(2) further states that " . . .the State commission *may*, in the case of an area served by a rural telephone company and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, *so long as each additional requesting carrier meets the requirements of paragraph (1).*" Read together, we find that these provisions dictate that a state commission must designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). Consistent with the Joint Board's finding, the discretion afforded a state commission under section 214(e)(2) is the discretion to decline to designate more than one eligible carrier in an area that is served by a rural telephone company; in that context, the state commission must determine whether the designation of an additional eligible carrier is in the public interest.¹⁰

The difference between the request to provide service in SBC territory and the request to provide service in CenturyTel territories lies in the fact that CenturyTel is a rural telephone company. 47 U.S.C. § 214(e)(6) provides that the Commission may, with respect to an area served by a rural telephone company, designate more than one ETC and requires that the Commission determine that such designation is in the public interest. Likewise, A.C.A. § 23-17-405(b)(5) requires the Commission to determine that ETC designation is in the public interest. The "shall" provision in the Federal Statute is not applicable in determining whether ETC status should be granted in a rural telephone company territory.

¹⁰ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, adopted May 7, 1997 ¶ 135, FCC 97-157. (Also see *id* at ¶ 142).

In determining whether to grant ETC status to ALLTEL in the areas served by CenturyTel a determination must be made of whether such a grant is in the public interest. The ILECs comments suggest that the potential harm to the ILECs, and possibly their customers, outweighs any benefits the customers may gain by having a competing ETC. ALLTEL's witness Mr. Krajci stated that ALLTEL's local calling area is "basically statewide." If ALLTEL is granted ETC status, customers, particularly Lifeline and Linkup customers, will have the benefits of a substantially increased local calling area. This could serve to reduce their toll bills and could make the service offered by an alternative ETC much more economically desirable. ALLTEL also asserts that its customers will have the benefit of mobility which the existing ETC does not currently provide. Granting ETC status to ALLTEL would also help open the telecommunications market to competition on fair and equal terms, consistent with the legislative intent of Act 77. The FCC has also stated that wireless carriers could potentially offer service at much lower cost than traditional wire line service, particularly in rural areas¹¹.

As for the potential harm to the ILECs resulting from the increased cost to the Universal Service Fund, ALLTEL notes that, for the 4th quarter of 2002, all competitive ETCs, both wireless and wire line, received only about 7% of the total USF disbursement. Therefore, it is logical to conclude that the impact on the USF from granting ALLTEL's application in this docket would be de minimis.

The customers who could benefit from the granting of this ETC request are currently contributing through rates, assuming they currently have telephone services, for the Federal USF. Since the USF is funded from assessments on all interstate services, these customers are

¹¹ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, adopted May 7, 1997 ¶ 190, FCC 97-157.

contributing to the costs of ETCs in Arkansas, including the ILECs filing comments in this docket who have ETC status, and are also contributing to the costs of ETCs in other states, just as customers in other states would contribute to carriers granted ETC status in Arkansas. On page 8 of its reply comments ALLTEL cites an order of the Wisconsin Public Service Commission entered on September 9, 2003 in Docket No. 7131-T1-101, concerning ALLTEL's application for ETC status in Wisconsin. In that order the Wisconsin Commission notes that 18 other State Commissions and the FCC have approved wireless ETC applications in rural areas. Given that Arkansas consumers are already paying for ETCs in other states, Arkansas Consumers would undoubtedly find it to be in the public interest for them to be allowed the benefits of a competitive ETC that seeks to provide service in areas of Arkansas. As described by ALLTEL witness Mr. Krajci,

...[W]ireless customers do contribute to the Federal Universal Service Fund. And additionally, those costs will be spread not over Arkansas users but over everyone that pays into the Federal USF on a nationwide basis. So to the extent that there are costs associated with ALLTEL receiving Federal support in Arkansas, yes, there are. When one asks who pays for that, actually, all wire line and wireless telephone users in all of the United States pays for that. So the benefit is that what ever cost is associated with Arkansas' customers, the benefit is something greater than that cost.¹²

A determination that granting ETC status to ALLTEL in this proceeding is in the public interest is not merely a "pork barrel local determination."¹³ Rather it is a simply recognition of the fact that customers in Arkansas, just as customers in other states, would prefer to share the benefits for which they are paying .

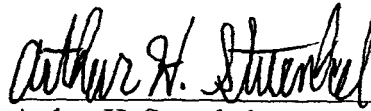
¹² Transcript p. 48.

¹³ Id at 49.

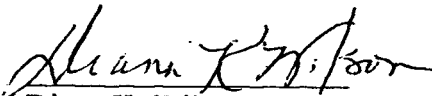
In view of the foregoing the request by ALLTEL Communications, Inc. for ETC status in wire centers served by SBC, CenturyTel of Northwest Arkansas, LLC and CenturyTel of Central Arkansas LLC located in cellular market areas 92, 165, 182, 291, and 324-331 is hereby granted.

BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 31st day of December, 2003.

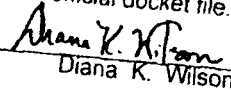


Arthur H. Stuenkel
Presiding Officer



Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by the U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.


Diana K. Wilson

Secretary of the Commission

Date

12/31/03

EXHIBIT

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ALECA - 1
admitted

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION
OF ALLTEL COMMUNICATIONS, INC.,
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER PUR-
SUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934.

DOCKET NO. T-03887A-03-0316
COMMENTS OF THE ARIZONA
LOCAL EXCHANGE CARRIERS
ASSOCIATION AND REQUEST
FOR HEARING

These comments are filed on behalf of the Arizona Local Exchange Carriers Association ("ALECA"), a non-profit corporation comprised of independent local exchange carriers serving rural Arizona. ALLTEL Communications, Inc., ("ALLTEL") has applied for designation as an Eligible Telecommunications Carrier for federal universal service funding throughout its licensed service area in the State of Arizona, which includes both rural and non-rural areas. In connection with its application, ALLTEL seeks to redefine the service areas for rural telephone companies Arizona Telephone Company, CenturyTel of the Southwest, Midvale Telephone Exchange, Navajo Communications Company-Arizona, South Central Utah Telephone Association and Table Top Telephone Company, each of which are members of ALECA.¹ However, ALLTEL has not demonstrated that its designation as an ETC in those rural portions of its licensed service area is consistent with the public interest, convenience and necessity. In fact, ALECA believes that the designation of ALLTEL as an additional ETC is *contrary* to the

¹ Arizona Telephone Company and Table Top Telephone Company have each been granted intervenor status in this docket, and Table Top filed separate comments opposing the ETC designation for ALLTEL on August 22, 2002.

Snell & Silmer

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1 public interest. Therefore, ALECA opposes the designation of ALLTEL as an ETC in these
2 rural areas, and requests that the Commission schedule a hearing so that interested parties can
3 present evidence and the Commission can make an informed decision regarding the requested
4 designation.

5 INTRODUCTION

6 For many decades, independent local exchange carriers have provided affordable and
7 reliable telecommunications services throughout rural Arizona. For these rural ILECs, federal
8 universal service fund support has always been—and continues to be—an indispensable source
9 of cost recovery that enables those companies to provide contemporary telephone services at
10 reasonable rates to customers in high-cost areas. Congress certainly recognized that universal
11 service funding is the life blood of universal service when it differentiated between rural and
12 non-rural applicants for ETC designations in Section 214(e)(2) of the Telecommunications Act
13 of 1934, as amended by the Telecommunications Act of 1996 (the "1996 Act"). However, the
14 sustainability of the Universal Service Fund has been threatened by the ease and lack of
15 deliberation in which some state public service commissions and the FCC have approved
16 universal service support for wireless competitive local exchange carriers.

17 As the governmental body charged with designating eligible telecommunications carriers
18 in Arizona, the Arizona Corporation Commission effectively controls access to the life-
19 sustaining universal service monies. Thus, the Commission must carefully analyze whether the
20 public interest will be served by designating ALLTEL an additional ETC in the rural portions of
21 its licensed service area before it grants access to federal high cost support. Certainly, Congress
22 intended the 1996 Act to promote competition in the telecommunications industry. However,
23 Congress also made clear that universal service was not to be sacrificed on the altar of
24 competition.

25 ALLTEL has not shown that rural customers in its service areas will actually benefit from
26 its designation as an ETC, other than by making statements that it will bring the "benefits of

1 competition." ALLTEL has not identified what it will provide to customers that they do not or
2 cannot receive today. ALLTEL claims that it will provide "higher quality service, and lower
3 rates." Has ALLTEL quantified these claims? ALLTEL claims that it will provide "advanced
4 telecommunications options." What are these options? Are they not available today through the
5 rural ILECs?

6 ALLTEL already provides wireless service throughout its serving areas, and it does so
7 without Federal universal service support. Is the Commission to designate all wireless carriers in
8 these serving areas as ETCs? ALLTEL has not explained what new facilities it will construct to
9 provide local service, nor where those facilities will be located. The role of the Federal universal
10 service fund is to provide cost recovery. The ILECs that serve these rural areas must construct
11 infrastructure first; the universal service support follows approximately 18 months later.
12 ALLTEL, on the other hand, can receive support without constructing the infrastructure, and
13 there is no guarantee that ALLTEL will construct *any facilities* to provide local service in these
14 rural areas. The federal universal service fund was not intended as a funding source to allow
15 wireless carriers to build out their networks to capitalize on lucrative roaming and toll revenues.

16 If the Commission performs a careful analysis of ALLTEL's application, ALECA
17 believes the Commission will conclude that the designation of ALLTEL as an additional ETC
18 will not serve the public interest.

- 19 1. **The Commission may only designate ALLTEL as an ETC in rural areas of**
20 **the State if the Commission finds that the designation serves the public**
interest, convenience and necessity.

21 The Commission has no duty to designate ALLTEL as an additional ETC. Under Section
22 214(e)(2) of the 1996 Act, a state commission must designate more than one common carrier as
23 an ETC in a non-rural area if the carrier requesting designation meets the requirements of
24 Section 214(e)(1). However, a state commission may designate more than one common carrier
25 in a rural area only if the commission finds that (i) the designation is consistent with the public
26 interest, convenience and necessity; (ii) the carrier offers each of the services supported by the

1 universal service support mechanism as delineated in 47 C.F.R. § 54.101(a); and (iii) the carrier
2 advertises the availability of those services. In other words, the Commission's authority to
3 designate ALLTEL as an ETC in rural areas is purely discretionary, and such a designation may
4 only occur upon a finding by the Commission that the designation is consistent with the public
5 interest, convenience and necessity.

6 2. **In determining public interest, the Commission has previously focused on**
7 **whether or not the wireless competitive local exchange carrier will address**
8 **the lack of local exchange service on Native American lands.**

9 In the late 1990s, the Commission approved applications for ETC designations from each
10 of the rural ILECs in Arizona and Qwest. However, only once before has the Commission
11 considered an application for ETC status filed by a wireless CLEC, that being Smith-Bagley, Inc.
12 In Docket No. T-02566A-99-0207, Smith-Bagley sought designation as an ETC for those areas
13 within its licensed service covering portions of the Navajo, Hopi and White Mountain Apache
14 Reservations. Since the Commission has not adopted a specific set of standards to be applied in
15 determining the public interest, it is helpful to look at the factors previously considered by the
16 Commission in the case of Smith-Bagley.

17 In finding that the designation of Smith-Bagley as an additional ETC served the public
18 interest, the Commission focused almost exclusively on the scarcity of local telephone service on
19 the Native American lands served by Smith-Bagley, and the commitment made by Smith-Bagley
20 to bring local exchange service to those lands. Among the relevant factors cited by the
21 Commission were:

- 22 • American Indian and Alaska Native communities, on average, have the lowest
23 reported telephone subscribership levels in the country. According to reported
24 data,² for Arizona Indian Tribes within Smith-Bagley's licensed service area,
25 81.6% of the Navajo Nation, 49.3% of the Hopi Nation, and 64.5% of the White
26 Mountain Apache Nation are without telephone service. (Decision 63269 at 12, ¶
48).

² Benton Foundation Study entitled "Native Networking: Telecommunications and Information Technology in Indian Country" (April 1999).

- 1 • Smith-Bagley's licensed service area includes approximately 100,000 potential
2 Native American subscribers, most of whom live in remote areas where it is cost
3 prohibitive to provide traditional wireline telecommunications services (*Id.* at ¶
4 49).
- 5 • In many portions of its licensed service area, Smith-Bagley is the only
6 telecommunications provider offering any service and it is doubtful that any
7 wireline carrier will ever extend lines to these areas (*Id.*).
- 8 • Smith-Bagley was willing to expend the resources necessary to offer Basic Local
9 Exchange Telephone Service to every potential subscriber in its licensed service
10 area. (*Id.*) (Emphasis added).
- 11 • Within the Navajo Nation, telephone subscribership stands at roughly 23%, and
12 Smith Bagley was developing innovative programs targeted at the large number
13 of Native Americans without telephone service. (*Id.* at ¶ 50).
- 14 • Smith-Bagley diligently constructed its network to reach unserved areas which
15 may never be reached by wire (*Id.* at ¶ 51).

16 The Commission concluded that Smith-Bagley's application served the public interest
17 because it: (i) provides additional consumer choice; (ii) promotes telephone subscribership for
18 qualifying low-income Native Americans; (iii) may reduce health and safety risks associated
19 with geographic isolation; and (iv) promotes access to basic telephone service.³

20 3. **ALLTEL has not demonstrated that its designation as an ETC serves the**
21 **public interest under the factors considered in Smith-Bagley.**

22 Analyzing the factors that the Commission considered in the Smith-Bagley case,
23 ALLTEL has not shown that its designation as an ETC in the rural portions of its licensed
24 service area serves the public interest, convenience and necessity. ALLTEL's generic assertions
25 unsubstantiated by specific facts or documentary evidence fall far short of the requisite showing.

26 In a decision involving Western Wireless Corporation, the FCC stated as follows:

³ Smith-Bagley filed a subsequent application to expand its ETC designation to additional portions of the Navajo and Hopi Reservations in Docket NO. T-02556A-02-0223. The Commission applied the same standard in evaluating the public interest as it did in the original Smith-Bagley filing. The Commission also noted that Smith-Bagley had activated over 14,000 new Native American subscribers since the inception of its subsidized service to Native American lands in May 2001, and that the company was adding new subscribers at a rate of approximately 1,500 per month.

1 We caution that a demonstration of the capability and commitment to provide
2 service must encompass something more than a vague assertion of intent on the
3 part of a carrier to provide service. The carrier must reasonably demonstrate to
4 the state commission its ability and willingness to provide service upon
5 designation.⁴

6 The various assertions of ALLTEL regarding the public interest are addressed below:

7 • "Underserved Marketplace." ALLTEL claims that its designation as an ETC will
8 "further the public interest by bringing the benefits of competition to an underserved
9 marketplace." (Application at pp. 10-11). However, this claim is precisely the type of "vague
10 assertion" the FCC cautioned against. Unlike Smith-Bagley, ALLTEL provides no analysis
11 regarding the rural markets within its licensed service area, nor does it provide any market data
12 to substantiate its claim that the areas is "underserved." Obviously, ALLTEL already provides
13 wireless service in its licensed service areas, and ALLTEL did not need Federal universal service
14 money to establish service. In fact, there are a number of wireless carriers serving these same
15 rural areas, none of which required Federal universal service to establish service. What
16 additional benefits would the designation of ALLTEL (or another wireless carrier) provide to
17 customers in these rural areas that they do not have today?

18 ALLTEL also fails to describe what telecommunications infrastructure it will construct,
19 the cost and financing of that infrastructure, and the timetable for construction. ALECA has
20 concerns that ALLTEL may simply use Federal universal service support to expand its existing
21 wireless network to serve the lucrative roaming and long distance markets on major highways
22 and in populated areas. ALLTEL's application provides nothing to dispel these concerns, nor
23 does it provide tangible evidence of "its ability and willingness to provide service upon
24 designation."

25 • "Prior Designation of Smith-Bagley as an ETC." ALLTEL cites as support for its
26 application the fact that the Commission previously approved applications of Smith-Bagley, Inc.,

⁴ *Petition for Preemption of an Order of the South Dakota Public Utilities Commission* (CC Docket No. 96-45, FCC 00-248, released August 10, 2000).

1 for designation as an ETC in rural areas. (Application at p. 10). However, Smith-Bagley's
2 request for designation focused on providing local exchange service to Native Americans within
3 its licensed service area who do not currently have access to such service. In marked contrast,
4 ALLTEL's application is silent regarding the benefits that will accrue to Native American lands.

5 Candidly, ALECA has concerns regarding the designation of Smith-Bagley as an ETC.
6 While it is true that Smith-Bagley has distributed thousands of wireless handsets, it is not clear
7 that the result has been to increase local telephone service in the homes of Native Americans in
8 remote areas of Indian Country. If Federal universal service support is to be made available to
9 wireless carriers, the Commission has a duty to make certain that the promised results of
10 increased local phone service in the homes of rural customers is actually achieved, as opposed to
11 simply increasing the number of people carrying wireless handsets through Federal support.

12 In evaluating ALLTEL's application, this Commission must address a fundamental
13 question: Is the Commission prepared to designate multiple wireless carriers serving the same
14 designated service area? If yes, the result could be that a single area has a designated rural ILEC
15 and five or more designated wireless providers. ALECA submits that this is not what the United
16 States Congress nor the FCC intended. If, on the other hand, the Commission is not prepared to
17 designate multiple wireless carriers in a single area, then what factors will the Commission use to
18 distinguish between carriers? Using current telecommunications technology, virtually all
19 wireless carriers can provide the bundle of services that are supported by Federal universal
20 service. It may be appropriate for the Commission to open a generic docket to consider this
21 critical issue.

22 • "More Choices, Higher Quality Service and Lower Rates." ALLTEL asserts that
23 its designation as an ETC "will bring to consumers the benefits of competition, including
24 increased choices, higher quality service, and lower rates." (Application at p. 10). Once again,
25 ALLTEL offers vague assertions regarding the benefits of competition without providing any
26 information specific to ALLTEL or the rural areas it serves. ALLTEL has not specified how the

1 local service it would provide is of higher quality than the service currently being provided by the
2 rural ILECs. ALLTEL has not identified what increased choices (*i.e.*, products or service
3 offerings) it will provide. ALLTEL has not identified which rates of ILECs are higher than
4 ALLTEL's proposed rates for local service. Absent this information, the Commission cannot
5 properly evaluate ALLTEL's application.

6 • "Without Competition, there will be no Innovation or Advanced Service
7 Offerings." ALLTEL asserts that "[w]ithout competition, the incumbent provider has little or no
8 incentive to introduce new, innovative, or advanced service offerings." (Application at p. 11).
9 This statement, however, simply has no basis in fact if the Commission will consider the level of
10 service provided by ALECA's members. With the exception of just a few areas, these ILECs
11 provide digital switching, DSL-capable facilities, CLASS features and other contemporary
12 telecommunications features to rural areas of the state. Moreover, these ILECs are providing a
13 superior level of service to their customers, as evidenced by their exemplary complaint history in
14 Arizona.

15 Contrary to ALLTEL's assertion, Arizona's rural ILECs have many incentives to
16 introduce new and innovative products and services. They are already subject to competition
17 from wireless providers and Internet service providers, which requires that they continuously
18 work to provide a high level of service while maintaining competitive prices. In addition, rural
19 customers have come to expect and demand access to the same contemporary
20 telecommunications services as those living in urban areas. Through access to low cost loans
21 available to rural providers, many of these ILECs have invested in a robust, state-of-the-art
22 telecommunications infrastructure. For examples, the rural ILECs have the ability to provide
23 wireless local loops where such an application makes economic and technical sense.

24 • "Advanced Telecommunications Options." ALLTEL asserts that its designation
25 as an ETC "would give those in rural areas in the State of Arizona advanced telecommunications
26 options." (Application at p. 11). Yet, ALLTEL has not identified which advanced options it will

1 provide, nor has the company identified which advanced telecommunications are lacking in these
2 rural areas. Again, what services will ALLTEL provide that customers cannot obtain today?

3 • "Investment in Construction and Upgrading of Facilities." ALLTEL claims that
4 it will "use available federal high cost support for its intended purposes—the construction,
5 maintenance and upgrading of facilities serving the rural areas for which support is intended."
6 (Application at p. 11). Other than this naked assertion, ALLTEL provides no enforceable
7 commitment to construct infrastructure to serve unserved or underserved rural areas in Arizona.
8 The universal service provisions of the 1996 Act require Federal support be used for
9 infrastructure investment in areas where it would not otherwise be economically feasible to
10 provide services at rates that are affordable and reasonably comparable to urban areas of the
11 country. Without an enforceable commitment, there is not way to ensure that ALLTEL would
12 actually uses monies from the universal service fund to serve rural Arizona, or Arizona at all.
13 ALLTEL should describe what facilities it will construct, where they will be constructed, how
14 they will be financed, and the timetable for completing construction.

15 Notwithstanding ALLTEL's vague assertions, it has failed to carry its burden of
16 demonstrating that its designation as an ETC serves the public interest, convenience and
17 necessity. Accordingly, the Commission should deny ALLTEL's request.

18 4. **Designation of ALLTEL as an additional ETC will have an adverse impact**
19 **on rural Arizona.**

20 The designation of ALLTEL as an additional ETC will have an adverse impact on rural
21 Arizona, and should be rejected, for the reasons set forth below.

22 A. **The Uneven Playing Field.** Rural ILECs in Arizona are at a distinct
23 competitive disadvantage to CLECs such as Smith-Bagley or ALLTEL who are designated as
24 ETCs. A rural ILEC must invest substantial money in the construction of infrastructure to serve
25 customers before it is entitled to cost recovery from the Federal universal service fund. Further,
26 there is a lag of approximately 18 months from the completion of construction until the ILEC is

1 entitled to cost recovery from the fund. By comparison, once a CLEC has been designated an
2 ETC, the CLEC is entitled to USF support when it acquires a customer, and the CLEC may not
3 even need to spend any money to serve that customer. This is contrary to the purpose of the
4 Federal universal service fund, which is to provide recovery for the costs incurred in constructing
5 the network. A policy which allows a wireless CLEC to obtain "cost recovery" without actually
6 incurring costs, and to obtain disbursements from the Federal universal service long before the
7 rural incumbent is eligible, creates an uneven playing field that favors the wireless CLEC. The
8 end result of such a policy will be to discourage rural ILECs from making additional investments
9 in their networks.

10 **B. Cost Recovery for Free Use of the ILECs' Local Network.** ALLTEL,
11 and other wireless carriers including Smith-Bagley, do not compensate the rural ILECs to
12 terminate calls on their local networks. Thus, ALLTEL has the benefit of the ILECs' networks
13 without paying for its use of those networks. This is a serious problem in and of itself.⁵
14 However, if designated an ETC, ALLTEL will actually receive Federal monies to use for free the
15 networks that were constructed by the ILECs at their expense. Such a result defies all reason,
16 and is certainly contrary to the intent of the Federal universal service fund.

17 **C. Lack of Accountability.** There is little or no accountability to ensure that
18 monies obtained by ALLTEL from the Federal universal service fund would be used to construct
19 infrastructure in rural Arizona. For example, what would prevent ALLTEL from receiving
20 distributions from the Federal fund based on service provided to rural Arizona customers and
21 using those distributions to construct infrastructure in metropolitan Phoenix, or worse, in other
22 states? To allow ALLTEL to obtain Federal universal service funds without an accompanying
23 requirement that the funding be used dollar-for-dollar to construct infrastructure in rural Arizona
24 could result in a siphoning of limited resources that were designated for rural areas.

25
26 ⁵ To address this problem, the wireless carriers should be required to execute a traffic interchange agreement with each of the rural ILECs.

1 **D. Carrier of Last Resort.** Unlike ILECs, a CLEC may pick and choose the
2 customers it wishes to serve. The obligation of carrier of last resort imposes significant financial
3 burdens on ILECs, especially in rural areas. The financial burden is made worse when a
4 competitive provider erodes the customer base of the rural ILEC. In evaluating the public
5 interest, the Commission should consider the adverse impact that cream-skimming would have
6 on the rural ILECs.

7 Additional information regarding the negative impact of designating additional ETCs in
8 rural areas is contained in the paper by Dale Lehman entitled "*Universal Service and the Myth of*
9 *the Level Playing Field*," a copy of which is attached hereto as Attachment "A."

10 5. **Protection of the universal service is a key objective of the 1996**
11 **Telecommunications Act, and universal service must not suffer at the hands**
12 **of competition.**

13 Universal service and competition are two key principles embodied in the 1996
14 Telecommunications Act. However, Congress never intended that they stand on equal footing.
15 Competition is not itself an end, but rather a means to achieving the Act's true objectives:
16 advanced telecommunications services for the maximum number of consumers at lower prices. If
17 competition naturally led to universal service, there would be no need for the universal service
18 provisions of the 1996 Act. "It is precisely because competition does not engender universal
19 service in high-cost rural areas, or for low income households, that Congress went to great
20 lengths to articulate universal service goals and how they were to be achieved."⁶ Blindly
21 supporting competition in rural areas could lead to higher prices and less service.

22 Senator Byron Dorgan, who introduced the language in the 1996 Act requiring a public
23 interest finding before designating additional ETCs in rural areas stated as follows:

24 *The protection of universal service is the most important provision in this*
25 *legislation. S.652 contains provisions that make it clear that universal service must*
26 *be maintained and that citizens in rural areas deserve the same benefits and access*

⁶ D. Lehman, "*Universal Service and the Myth of the Level Playing Field*" (August 12, 2003).

1 to high quality telecommunications services as everyone else.⁷

2 Similarly, Senator John Kerry of Massachusetts added that "[t]he conference report also
3 maintains universal service as a *cornerstone* of our Nation's communications system."⁸ Clearly,
4 Congress does not intend that universal service suffer at the hands of competition.

5 The size of the universal service fund is increasing at an astounding rate due in part to the
6 designations of multiple ETCs in the same serving area. As the size of the fund increases, so will
7 the pressure to limit the size of the fund. Rural carriers must continue to have access to a
8 sensible universal service fund to safeguard universal service in rural America. If access to the
9 Federal universal service fund is eliminated or significantly curtailed, then Arizona would be
10 forced to make up the shortfall through the Arizona universal service fund.

11 State commissions and the FCC have a solemn duty to protect the vitality of the Federal
12 universal service fund by carefully considering requests for designation as an ETC in rural areas
13 such as that filed by ALLTEL. ALLTEL has not demonstrated that the public interest will be
14 served by its designation as an ETC in the rural portions of its licensed service areas.

15 6. **ALLTEL has not addressed the individual impact to each rural area affected**
16 **by its application.**

17 A petitioning wireless CLEC such as ALLTEL should be required to address how the
18 designation of an additional ETC will affect each rural area individually, rather than permitting
19 ALLTEL to bunch all rural areas together for the purpose of addressing the public interest
20 requirement. One specific issue, for example, is how ALLTEL's designation would impact
21 South Central Utah Telephone Association, whose Arizona customers are served with facilities
22 located in Utah. Perhaps it would be appropriate for the Utah Public Service Commission to
23 conduct its own review of the impact of ALLTEL's ETC request on South Central Utah
24 Telephone Association.

25 ⁷ Congressional Record of June 8, 1995, S 7951-2.

26 ⁸ 142 Cong. Rec. S687, S710.

1 7. There are a number of critical issues presently before the Federal-State Joint
2 Board on Universal Service which should be addressed before the
3 Commission rules on ALLTEL's ETC designation.

4 A number of critical issues are under consideration before the Federal-State Joint Board
5 on Universal Service, including whether or not the FCC should provide standards or guidelines
6 for the states to follow in ETC designation proceedings. One of the areas that may be addressed
7 is the use by the applicant of an affidavit—such as that submitted by ALLTEL—to demonstrate
8 the ability and willingness of the applicant to provide the delineated services listed under 47
9 C.F.R. §54.101.

10 Another area of inquiry for the Joint Board will likely be a recent Utah Public Service
11 Commission decision where Western Wireless Holding Company was denied ETC status
12 because the company failed to demonstrate, among other things, that it had the technical
13 capability to serve the rural public in light of the topography of the individual rural communities
14 as issue.⁹

15 The implications of designating wireless carriers as ETCs in rural service areas are of
16 utmost importance to rural customers. The Commission should stay any decision regarding
17 ALLTEL's application until the Federal-State Joint Board on Universal Service has issues its
18 decision on the issues currently pending before that body.

19 8. The Commission cannot properly consider the public interest in this docket
20 without a hearing.

21 The Commission cannot properly consider the public interest in this docket without a
22 hearing. ALECA intends to participate actively in such a hearing, to present one or more
23 witnesses, and to cross-examine staff witnesses and the witnesses of ALLTEL.

24
25 ⁹ *In the Matter of the Petition of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications*
26 *Carrier, Public Service Commission of Utah, Docket No. 98-2216-01 (July 21, 2000), affirmed by WWC Holding*
 Company, Inc., v. Public Service Commission of Utah, 44 P.3d 714 (2002).

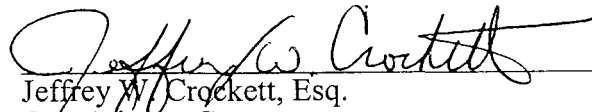
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CONCLUSION

ALLTEL has not shown that its designation as an ETC in the rural areas of its licensed service area will serve the public interest. Absent such a showing, the Commission must deny ALLTEL's application. Alternatively, the Commission should stay the application pending completion of reviews underway by the Federal-State Joint Board on Universal Service.

RESPECTFULLY submitted this 14th day of October, 2003.

SNELL & WILMER


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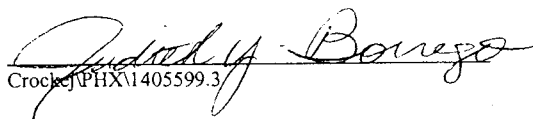
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ATTACHMENT "A"

Universal Service and the Myth of the Level Playing Field

by Dale Lehman¹

August 12, 2003

I. Introduction

Western Wireless, through a supporting document prepared by Steve G. Parsons, Ph.D., argues that wireless eligible telecommunications carriers (ETCs) should receive the same high cost support as incumbent local exchange carriers (ILECs), and that this support be based on forward-looking economic cost. Dr. Parsons relies on the following points to support his position:

- The Telecommunications Act of 1996 had twin goals of competition and universal service.
- Competitive neutrality, basing support on forward-looking economic cost, and elimination of rate-of-return regulation are essential for economic efficiency.
- There is little or no net cost to the Western Wireless policy prescription, due to historical inefficiencies of ILECs and the way they have been regulated.

Unfortunately, Dr. Parsons oversimplifies the 1996 Act regarding competition in rural areas. He relies on the invention “competitive neutrality” and erroneously ties it to economic efficiency. He incorrectly concludes that forward-looking costs and price cap regulation will improve economic efficiency. And, his portrayal of a “free lunch” is an illusion. In reality, the Western Wireless position has the cost of jeopardizing universal service support in rural America based on dubious economic reasoning. This paper explores these claims.

¹ Dale Lehman is Director of the MBA Program in Telecommunications Management at Alaska Pacific University. He received his B.A. in Economics from SUNY at Stony Brook, and his M.A. and Ph.D. in

2. Under the goals of the Act, competition is only a means to an end. Congress enacted provisions to ensure that competition does not jeopardize universal service.

Dr. Parsons refers to the twin goals of universal service and competition. Congress saw these goals as means through which consumers would obtain lower prices and advanced services. Congress was careful to treat the areas served by rural telephone companies differently, in recognition of the uncertainty regarding both the feasibility and the desirability of competition in rural service areas. The Act recognizes that competition may not serve the public interest in rural areas:

- Rural carriers were granted exemptions from the unbundling requirements of the Act.² Further, these exemptions could only be removed after a bona fide request for unbundled network elements, and a finding by the state regulator that this request is economically feasible, not unduly burdensome, and consistent with the universal service provisions (sec. 254) of the Act. Thus, while unbundling was a key pro-competitive element of the Act, it was not applied to rural service areas without additional findings by a state regulator.
- The Act provides for designation of multiple "eligible telecommunications carriers." While such designation is relatively automatic in areas served by large providers, designation of multiple ETCs in areas served by rural carriers must be found to be in the "public interest."³ This additional requirement clearly indicates that Congress was unsure that multiple ETCs in rural service areas was a good idea.
- The Act set out an ambitious universal service agenda, including comparable rates for comparable services in rural and urban areas.⁴ This extends to advanced services as well. Congress saw that such an agenda could not rely solely on competition in order to be achieved.
- The Act specified that universal service funding needed to be explicit, sufficient, predictable, and sustainable.⁵ This indicates a concern that the pro-competitive agenda of the Act not endanger the universal service agenda.

Economics from the University of Rochester. He has taught at 10 universities, been on the staff at Bellcore and served as Senior Economist at Southwestern Bell Telephone Company.

² Section 251 (f).

³ Section 214 (e) (2).

⁴ Section 254 (b) (2) and (3).

⁵ Section 254 (b) (5).

These provisions of the Act show that Congress understood that the impact of competition in rural service areas was different than in the primarily urban service territories of large carriers. It asked state commissions to carefully consider many of the pro-competitive features of the Act before applying them to rural service areas. It is precisely this careful consideration that has led the Joint Board to the present proceeding. These considerations are not reflected in Dr. Parsons' document on behalf of Western Wireless. His initial statement is that "the twin goals of universal service and competition are complementary public policy objectives and neither can be fully achieved without the other."⁶ According to Dr. Parsons, there is no tradeoff between these two goals. Therein lies the fundamental problem with Dr. Parsons' position.

3. Economic efficiency does not necessarily result in universal service. Thus, the relevance of efficiency in the provision of universal service means achieving universal service goals at minimum cost, without sacrificing quality.

Supporting competition in rural service areas could lead to higher prices and less service. If competition naturally led to universal service, then the universal service provisions of the Act would be unnecessary. It is precisely because competition does not engender universal service in high-cost rural areas, or for low income households, that Congress went to great lengths to articulate universal service goals and how they were to be achieved.

Two examples of deregulation -- airlines and railroads -- illustrate how competitive market forces may lead to higher prices and less service in rural areas. These examples

⁶ Attachment D to Reply Comments of Western Wireless, at page 1.

also show how support programs may be inadequate in addressing these deficiencies. Congress deregulated the airline industry in 1978. One of the results was the loss of service to many rural areas. Congress created the Essential Air Service (EAS) program as a subsidy mechanism to provide service where the competitive market would not. The program provides subsidies for continued service as a result of deregulation.⁷ The EAS program has not prevented significant increases in rural air service prices nor has it prevented many rural communities from losing services.

Through the Staggers Act, Congress deregulated the railroad industry in 1980 (decades too late according to many economic experts). One of the most important features of this law was the provision for railroads to discontinue freight line service on routes that were unprofitable. Prior to the Staggers Act, railroads were forced to sustain unprofitable freight routes even while attempting to compete with other transportation modes. The result was extensive losses and many bankruptcies in the railroad industry.⁸ Passenger railroads, on the other hand, are unable to provide viable service to small communities, despite an extensive government subsidy program.

These examples should give pause to the idea that universal service and competition are complementary goals. In both cases, deregulation has resulted in increased economic

⁷ Details on the EAS can be found at www.ostpxweb.gov/aviation/rural/easfaqs.htm. Currently 104 communities receive EAS subsidies.

⁸ A good review of the regulatory experience of railroads can be found in Gallamore, "Regulation and Innovation: Lessons from the Railroad Industry," chapter 15 in Gomez-Ibanez, Tye, and Winston, editors, *Essays in Transportation Economics and Policy: A Handbook in Honor of John R. Meyer*, The Brookings Institution, 1999, pages 499-500.

efficiency, but in neither case has deregulation furthered the availability and affordability of services in rural areas.

Any reasonable analysis of universal service must begin with the premise that competition and economic efficiency go hand in hand, but that neither fits easily with universal service. It is a difficult task to achieve competition, efficiency and universal service simultaneously. Competition generally leads to economic efficiency (but not to universal service). It does so by generally ensuring that prices reflect the minimum costs of producing different goods and services, and that all producers and consumers face the same set of prices. Decisions are then made that economize on the use of scarce resources to produce the maximum value possible.⁹ However, policy-makers were not comfortable with the results of an economically efficient market for telecommunications services in high cost rural and insular areas, and for low income households. That is the purpose of the universal service provisions of the Act – to ensure the provision of services for rural and low income consumers that an economically efficient market might not produce.

Do we really believe that the economic value of connecting all high cost/low income customers is worth the cost to them and those that want to contact them?¹⁰ Once we

⁹ This is roughly what Dr. Parsons means by his four types of economic efficiency.

¹⁰ Universal service programs have an economic efficiency justification through what is called the "network externality." This refers to the fact that networks become more valuable to all of their users as the size of the user group increases. This externality is real and may be an economic justification for reducing the price of network access in high cost areas. It does have limits, however. In a network, such as the US, with 95% penetration of basic telephone service, it is hard to see that the relatively small number of high cost customers produce a value commensurate with this cost. These high cost/low income subscribers are not likely to be able or willing to pay the cost of network connection, and it is unlikely that the network externalities are large enough to provide an efficiency justification for their connection.

support the access cost for these customers, we tradeoff some economic efficiency for the public goal of universal service by distorting their consumption decisions (they will consume relatively more telephone services and relatively less of other goods and services). Other consumption decisions are affected through whatever funding mechanism we use (those paying the support through universal service surcharges, for example, will consume relatively less of these services and more of substitute services -- including internet services, cable telephony, etc.). Universal service is not, in general, economically efficient, and economic efficiency is not the goal of universal service.

In their classic book, Baumol and Sidak state that "another example of a goal that conflicts with economic efficiency is the nearly ubiquitous target called 'universal service.'"¹¹ Given these fundamental conflicts, the application of economic efficiency to high cost funds is necessarily circumscribed. Public policy dictates that comparable services are to be available at comparable rates to "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas."¹² Economic efficiency is not the measure with which to determine what services are to be provided, at what prices, and for which consumers. Economic efficiency is relevant in that it asks that these objectives be achieved at minimum cost. On these grounds, the Western Wireless position comes up short.

¹¹ William J. Baumol and J. Gregory Sidak, *Toward Competition in Local Telephony*, The MIT Press, 1994, at page 25.

¹² Section 254 (b)(3)

Ironically, Dr. Parsons provides a perfect example of this.¹³ The following table summarizes Dr. Parsons' example:

Monthly Costs	Incumbent	Entrant	Total USF
Fixed Cost	\$10,000	\$8,000	
Line-Sensitive Cost	\$10	\$8	
Lines pre-entry	1000	0	
Total Cost pre-entry	\$20,000	0	
Per-line USF	\$20	0	
Total USF pre-entry	\$20,000	0	\$20,000
Lines post-entry	900	300	
Per-line cost post-entry	\$21.11	\$34.67	
Total cost post-entry	\$19,000	\$10,400	
Per-line USF	\$21.11	\$21.11	
Total USF post-entry	\$19,000	\$6,333.33	\$25,633

In his example, the incumbent initially serves 1000 lines at a fixed cost of \$10,000 per month plus a variable cost of \$10/month/line. All revenues are assumed to come from the universal service fund, so the incumbent's total monthly support is \$20,000 or \$20/line. Dr. Parsons then assumes that a "less costly provider" enters with fixed costs of \$8,000/month and line-sensitive costs of \$8/month/line and serves 300 lines. He assumes the incumbent now serves only 900 lines (presumably, the market has expanded now to

¹³ Parsons, page 8.

1200 lines). The incumbent's cost would now be reduced to \$19,000 or \$21.11/month/line (100 lines, and the variable costs associated with them, have been lost to the entrant). The entrant would receive $300 * \$21.11 = \$6,333$ although its costs would be $\$8000 + 300 * \$8 = \$10,400$. He uses this example to purportedly show that "CETCs are unlikely to recover as great a percentage of their total costs as the incumbent."

The example is flawed. First, is the entrant really a lower cost provider? This would only be true if the entrant could serve all of the incumbent's customers with this cost structure. And, if that is the case, then the entrant would replace the incumbent in this example. The entrant would receive a per-line subsidy of $\$10 + \$10,000/Q$, where Q is the number of lines served by the incumbent. Given that the entrant's per-line costs are only $\$8 + \$8000/q$ (where q is the number of lines served by the entrant), the entrant can satisfy the market demand more cheaply than the incumbent, and support based on the incumbent's costs, would be more than sufficient to achieve this result. In actuality, in Dr. Parsons' example, the entrant is a more costly provider than the incumbent on a total cost per subscriber basis (\$34.67 per line versus \$21.11). More importantly, note how total high cost support for this area is now more than 25% greater than it was prior to designating the second ETC and providing it with support based on the ILEC's costs.

Dr. Parsons' example does not claim that the entrant can serve the whole market with this cost structure – presumably he is trying to mimic reality where a wireless entrant may take some of the incumbent's lines but predominantly will serve additional consumers.¹⁴

¹⁴ This is not to say that it is realistic to assume that wireless carriers will substitute for many incumbent lines. This is discussed in the next section.

This begs the question: why has this "lower cost" provider managed only to capture 10% of the incumbent's lines? The answer is that the entrant is not providing a very substitutable service for the incumbent's service. This is what permits the entrant to have a "lower" cost structure as well. The "lower" fixed cost than the incumbent was only achievable because of its lower scale of operations in the incumbent's territory – it could not serve the whole market for the \$8,000 fixed cost.¹⁵

It is important to capture the essentially realistic features of Dr. Parsons' example. Wireless providers may well have a lower total cost structure for the services they provide in the areas they choose to serve. They generally build out networks in rural areas along main roads/highways and in population clusters. ILECs, on the other hand, as carriers of last resort, build their networks to serve all customers wherever they choose to live within the serving area. They stand ready to serve all customers. The wireless service may or may not work at a given subscriber's home location. Consequently, the wireless service is less likely to work as a replacement for the ILEC connection to the network than it is to displace a considerable number of wireline minutes of use. The wireless provider is likely to take relatively few lines from the incumbent but will serve a sizeable market of customers that subscribe to wireless service as a complement to their wireline service. The result is that the previous universal service fund (\$20,000/month in

¹⁵ A more realistic description of a wireless cost structure would probably have relatively low line-insensitive costs. Wireless technology does not have the same scale economies as wireline service – this presumably is one reason why wireless markets are more competitive. Rural wireless services, in particular, may exhibit diseconomies of scale since it is likely to be costly to provide service coverage that includes the entire area. Not only do cell sites need to be added in proportion to the number of users, but many additional sites would be required to service very few users along sparsely populated roads.

the Parsons example) has now grown (to \$25,333 in the Parsons example¹⁶) and portable per-line support has grown from \$20 per month to \$21.11. It is this growth in the fund that jeopardizes it, and is not likely to be efficient.

I am not declaring that rural wireless services are undeserving of high cost support. That is a public policy question that should be posed in its own right. What I am pointing out is that the use of the high cost fund -- a fund originally developed to support landline network access in high cost areas -- to support additional wireless services in such an area, will increase the overall cost of universal service. It is more costly to support two networks than one, and it is even more costly to provide support for two disparate networks on the basis of the cost characteristics of one. That is the more optimistic scenario. The worst outcome is that the political support for the USF is shaken and the high cost fund is capped, reduced, or otherwise limited. As a result, ILECs would not receive sufficient support to provide network access in high cost areas. Loss of service is not what is meant by universal service.

Western Wireless and Dr. Parsons think this outcome can be averted. They offer forward-looking costs and incentive regulation as escapes. These are purported to reduce service costs in high cost areas so that there need be no increase in the fund as a result of their policies. Like other "free lunches" these cost savings are illusions. They are taken up in the next two sections.

¹⁶ This probably underestimates the total cost since it presumes that the ILEC has "saved" \$1000 in line-sensitive costs due to the 100 lines now served by the entrant. To the extent that there is less substitution

4. Forward-looking cost, while a valid theoretical benchmark, is not likely to further the goal of universal service in rural America.

Dr. Parsons is correct to point out the theoretical superiority of forward-looking cost over embedded (historical) costs for purposes of decision-making. What he fails to address, however, is the difficulties and ambiguities of measuring forward-looking cost, particularly for rural carriers. Forward-looking and embedded costs are not totally dissimilar.¹⁷ Both are measured at a point in time: one looks forward and the other looks backward. Both will change over time, due to the same factors. As technology improves, both forward-looking costs and embedded costs will decline. The latter declines with a lag since it partially reflects earlier (presumably higher cost) investments. Dr. Parsons provides examples of real estate and used computers as evidence that forward-looking costs are likely to be very different than embedded costs. These examples are misleading.

There is no evidence that local telecommunications services experience the rapid technological progress of the computer industry or the volatile swings of the real estate market. Rather, in a capital-intensive industry such as telecommunications, technological progress is a relatively slow evolution of the network. Even as technology advances, some costs (e.g., labor for installation of network facilities) increase. We should expect embedded costs to more closely resemble forward-looking costs under these conditions.

than this and/or the ILEC experiences less line-sensitive cost savings, the total cost will be higher.

¹⁷ For a detailed discussion of the relationship between forward-looking and embedded cost, with a simulation of their differences, see D.E. Lehman and D.L. Weisman, *The Telecommunications Act of 1996: The 'Costs' of Managed Competition*, Kluwer Academic Publishers, 2000.

Even if we accept Dr. Parsons' examples as relevant, his conclusion that we should base high cost support on forward-looking cost is inadequate. Regulators have based retail rates for local exchange carriers on prescribed and lengthy depreciation lives, and have sought to maintain relatively constant prices over time. These practices may be appropriate in a highly regulated environment but are out of line and inefficient under conditions of rapid technological change and/or volatile market conditions. Absent long term contracts, computer lease terms clearly show the need to recover costs rapidly under conditions of rapid technological change. Forward-looking costs are the right measure in that industry, and they are dynamic and far from constant over time. On the other hand, local exchange technology exhibits less rapid change and requires significant sunk investments. Under these conditions, the divergence between forward-looking and embedded costs should be much smaller.

How would Dr. Parsons measure forward-looking costs? Presumably, he believes the Hybrid Cost Proxy Model (HCPM) should be used for this purpose.¹⁸ The Rural Task Force has devoted considerable effort to examining the HCPM in rural areas. Their conclusion, supported by the Joint Board, was that it was not appropriate for use in the areas served by rural telephone companies.¹⁹ It is not just minor technical problems that can be easily fixed. Despite the considerable complexity of the model, it does not produce realistic estimates at a disaggregated level. If the results are averaged over large study areas, many of the inaccuracies may even out. In rural study areas, however, the

¹⁸ Parsons, at page 4. He acknowledges that the HCPM may have "shortcomings" but claims it can provide reasonable cost estimates for rural areas.

¹⁹ *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 6165, 6168-6182 (2000) (RTF Recommendation).

model produces cost estimates that “vary widely from reasonable estimates of forward-looking costs.”²⁰ It is unlikely that this flaw can be rectified in the near future. Furthermore, the HCPM contains no estimate of wireless network costs, nor does it estimate costs in a market where there are multiple ETCs.

Of course, forward-looking costs can be measured using other models. There are company-specific models that can provide such cost estimates.²¹ However, is it efficient to have thousands of ETCs preparing their own cost studies with oversight of regulatory commissions? It is hard to see how this can improve economic efficiency. Wouldn't it be less costly and more accurate to base a CETC's support amount on its own costs and rely on the readily available embedded cost data to calculate a rural ILEC's support?

Dr. Parsons dismisses such data as irrelevant. He claims it does not appear to be “audited for accuracy and consistency.” He provides no substantiation for this claim. I will not claim any particular accuracy for this data. The more relevant question is: what is the alternative? How does one audit a forward-looking cost model for accuracy? Cost proxy models are, by definition, consistent. The problem is they are consistently inaccurate, particularly when applied to small units of geography.

Embedded cost data is reported in a consistent manner and is auditable. While auditing is less than perfect, the *inability* to meaningfully audit forward-looking economic cost data is dramatic. If regulators wish to audit more extensively, that can be accomplished. It is

²⁰ RTF Recommendation, 16 FCC Rcd 6181.

relatively easy to compare time series of USF embedded costs across many companies, and look for outliers. It is not relatively easy to screen HCPM results for small units of geography for accuracy, without any benchmark of comparison. The only available benchmark that has any validity (meaning it can be audited) is the embedded cost data itself!

The problems with the HCPM are well documented and have been carefully considered by the Rural Task Force.²² The danger in Dr. Parsons' position is that it suggests that the inefficiencies of using embedded cost data for calculating rural ILECs' high cost support amounts might be large enough to make the Western Wireless proposals costless. Under this reasoning, making high-cost support fully portable on an equal per line basis to wireless ETCs need not increase the size of the fund if it is based on the HCPM rather than the rural ILEC's embedded cost. This position is not substantiated, nor can it be defended.

The HCPM currently produces forward-looking cost estimates comparable to embedded costs, on a nationwide average basis.²³ So, moving from one basis to the other will not in itself reduce the size of the USF²⁴ – but the other parts of the Western Wireless proposal will increase the USF. It is possible to change the inputs and structure of the HCPM so

²¹ I generally believe these to be superior estimates of forward-looking costs and have testified to this point, as has Dr. Parsons.

²² Rural Task Force, White Paper No. 4, *A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, September 2000. As noted previously, the Rural Task Force subsequently recommended against use of the HCPM for the rural carriers, a decision reiterated by the Federal State Joint Board on Universal Service.

²³ See Lehman and Weisman, footnote 9, page 78.

²⁴ On the other hand, applying the HCPM to small units of geography such as census block groups (CBGs), has the potential to significantly *increase* the size of the fund.

that it reduces the size of the USF enough to "pay for" the portability of support to wireless ETCs. It is not possible, however, to make the HCPM capable of providing telecommunications services to rural America. No amount of model magic can produce the high quality of service that rural carriers currently provide to their subscribers. (Mis)use of the HCPM to arbitrarily reduce support levels can threaten the availability of high quality service in rural America.

Dr. Parsons claims that the level of geography for determining USF should be "as small as administratively feasible."²⁵ Dr. Parsons also asserts that the current USF mechanism is not competitively neutral with respect to large and small ILECs serving high cost areas, and further, that this creates perverse incentives for the sale of rural properties to small ILECs. There are several points of order here. The use of smaller units of geography does, in general, provide more accurate measurement of universal service costs.²⁶ Aggregation to the study area level results in inadequate support. This deficiency is greater the larger the study area. This is the reason why I agree with Dr. Parsons that the current mechanism is not neutral between large and small ILECs serving high cost areas.²⁷ High cost areas served by large ILECs receive little or no support while those

²⁵ Parsons, at page 6. He does caveat this statement with some practical requirements about data availability.

²⁶ See, D.E. Lehman, "Who Will Serve Rural America?" NTCA White Paper No. 2, Appendix, for a formal derivation of this property. The fact is that high cost support would balloon if it were disaggregated, say, to the CBG level. The California state high cost fund is computed at the CBG level and the total fund is around 10 times as large as federal high cost funding in the state, as a result.

²⁷ Equalizing the treatment of high cost areas served by large and small ILECs would substantially increase the size of the fund. The justification for treating large and small ILECs differently is that the large ILEC is better able to provide support for high cost areas internally, by charging higher rates for other customers or services. Similarly, using smaller geographical units (e.g., wire centers rather than service areas) would also increase the size of the fund (although it would be more accurate). Notably, when the FCC authorized disaggregation of USF support, it did not permit the overall level of support to increase.

served by small ILECs do receive support (although it is still somewhat inadequate since it averages high and relatively lower cost subscribers).

The “perverse” incentives for the sale of rural exchanges, however, are simply not present. The FCC’s rules do not permit high cost support to be calculated on the basis of the acquiring company’s study area. Instead, the acquiring company’s support is limited by the per line level of the selling company. Thus, when a rural exchange is sold from a large ILEC to a small one, the high cost support does not increase to fully reflect the cost of serving the acquired exchange.²⁸ Thus, part of the lack of competitive neutrality between large and small ILECs is exported to the acquiring company. Rural America would be better served if this constraint were dropped and the incentives for acquisition of high cost exchanges by rural ILECs were enhanced.

5. Rate-of-Return Regulation is a red herring – Western Wireless overstates its costs and underestimates the risks of its alternatives.

Similarly, Dr. Parsons and Western Wireless produce the bogeyman of rate-of-return regulation (RORR) as the culprit responsible for inefficiency. Presumably, if we dispense with inefficient RORR, the demands on the USF would be reduced sufficiently to pay for the portability that Western Wireless desires. Just as with embedded cost, Dr.

²⁸ The so-called mergers and acquisitions cap was modified in 2001 with the FCC’s adoption of “safety valve” support. Safety valve support is provided to rural carriers for up to 50 percent of any positive difference between the rural ILEC’s index year expense adjustment for the acquired exchanges and subsequent year expense adjustments. However, total safety valve support available to all eligible study areas is limited to no more than five percent of rural ILEC support available from the annual high-cost loop fund. See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local*

Parsons' assessment of RORR is flawed and overly simplistic. RORR, like embedded cost, is a red herring whose only purpose in the Western Wireless comments is to create the illusion that portability of the USF to wireless ETCs need not cost anything.

The theoretical inefficiencies of RORR are well-known but irrelevant to this proceeding. Price cap regulation can provide superior incentives to RORR: carriers, in theory, have incentives to reduce costs when they can keep some (if not all) of the increased profits that may result. RORR does not have this feature so, in theory, it results in inefficiently high investment and operating costs. In theory, this comparison is unassailable. In practice, however, it is more complicated and likely to be wrong for a number of important reasons.

- Price cap regulation, in practice, is less efficient than theory would suggest.
- The empirical evidence on price cap regulation does not suggest dramatic efficiency gains.
- The application of price cap regulation to small carriers raises a number of practical problems that suggest it is likely to be less efficient than when applied to large carriers.
- RORR, as actually practiced, is not as inefficient as theory would suggest.

I now examine these points in more detail.

The theory of incentive regulation attributes efficiency benefits over RORR when the price cap regime entails no earnings reviews, no earnings sharing, and adjustments of the X factors (productivity offsets) only when industry-wide productivity patterns change. In practice, none of these factors are strictly adhered to. Earnings have either been explicitly shared, or implicitly shared through periodic adjustments to the X factors. In

Exchange Carriers, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11285, para. 98 (2001).

addition, regulators have a number of additional policy levers (entry conditions, UNE pricing, quality standards, etc.) that they may use differently under price caps than under RORR. The theoretical advantages of price cap regulation over RORR are reduced when any of these features are present.²⁹

The empirical studies of price cap regulation appear to bear this out. The evidence that price cap regulation results in cost decreases relative to RORR is weak, at best.³⁰ There are still questions as to whether the cost declines merely reflect decreases in the quality of service and not true efficiency gains. The result of applying price cap regulation to the large carriers has been underwhelming efficiency gains, if any.

We should expect even smaller efficiency gains (if any) if price cap regulation were to be applied to the rural ILECs. First, these are a diverse set of carriers so that design and monitoring of the price cap plans would need to vary considerably among carriers. The relevant productivity gains would be quite different for carriers that operate in significantly differing environments (geographic and demographic). Second, the move to price cap regulation requires that service quality be monitored. This means that state regulators would need to expand significantly their measurement of service quality for

See also, 47 C.F.R. §54.305.

²⁹ See D.E.M. Sappington and D.L. Weisman, *Designing Incentive Regulation For The Telecommunications Industry*, The MIT Press, 1996.

³⁰ D.J. Kridel, D.E.M. Sappington, and D.L. Weisman, "The Effects of Incentive Regulation in the Telecommunications Industry: A Survey," *Journal of Regulatory Economics*, Vol. 9(3), May 1996, pp. 269-306, and Ai and Sappington, "The Impact of State Incentive Regulation On the U.S. Telecommunications Industry," *Journal of Regulatory Economics*, 22, 133-159, 2002. The latter found more network modernization under price caps but that "operating costs are not found to be significantly lower... on average." Sappington, "Price Regulation and Incentives," in the *Handbook of Telecommunications Economics*, edited by Cave, Majumdar, and Vogelsang, North-Holland, 2002, finds that evidence of price cap regulation on cost reductions is "mixed." Clement Krouse and Jongsur Park,

many small ILECs in their jurisdiction. Third, exogenous adjustments to the price cap plan would need far more attention for small ILECs than for large ones. Policy/industry changes may have much more dramatic impacts on smaller carriers. For example, any change in service standards for rural carriers (such as RUS requirements for data speeds) may have significant cost implications that would require adjustment of the price cap mechanism. Fourth, investment spikes are more volatile for small carriers than for large ones, and this poses difficulties for the design of an appropriate price cap mechanism. One of the advantages of RORR for rural carriers is that it offers some revenue stability. This is important for a carrier with both high costs of service and costs that cannot be easily reduced under an obligation to provide service throughout its service area. In practice, far from offering a panacea, price cap regulation for the many rural ILECs promises to be a quagmire of costly administrative details.³¹ Based on the current evidence, the gains appear to be small in comparison.

It must also be noted that increased efficiency of rural ILECs may not be as desirable as it is portrayed by Dr. Parsons. It is likely that many rural deployments of broadband services are not profitable, due to relatively low consumer adoption rates.³² A recent NTCA survey showed that while respondents are making broadband services available to an average of 70% of their customers, only 6% of residential customers and 9% of business customers actually subscribe.³³ Price cap regulation would provide incentives

"Price Effects of Incentive Regulation in Local Exchanges," *Information Economics and Policy*, June 2003 find more evidence of price decreases than cost decreases under price cap regulation relative to RORR.

³¹ This may explain, in part, why adoption of price cap regulation in the electric industry has not been as pervasive as in telecommunications.

³² For example, see D.E. Lehman, *The Costs of Competition*, NTCA White Paper #3.

³³ *NTCA 2003 Internet/Broadband Availability Survey Report*, May 2003, p. 6. Available online at www.ntca.org.

not to deploy unprofitable services. RORR limits these incentives but does not eliminate them, since the deployment costs are part of the revenue requirement of the regulated firm. Unprofitable services are also likely to be economically inefficient services.³⁴ So, if regulators wish economic efficiency as a goal, then price cap regulation will help promote this by *decreasing* the provision of broadband services in rural areas. If this outcome is not what regulators want, then they should be wary of the purported benefits of moving from RORR to price cap regulation.

Similarly, RORR is not as inefficient in practice as in theory. RORR carriers have multiple incentives to operate efficiently. Significant competitive pressure exists in the form of wireless usage, IXC bypass, VoIP, etc. Wasteful practices and unnecessary investments are not wise strategies for rural ILECs. They have multiple auditors, both internal (shareholders, coop members, etc.) and external (regulators, private and government lenders, NECA, USAC).³⁵ It is an insult to this oversight effort to simply dismiss the accounting data as not being audited.

Western Wireless baldly asserts that RORR provides incentives "to pad costs" but does not mention the incentives of CETCs (and others) in a forward-looking cost study. Forward-looking cost studies have an unprecedented ability to produce unachievable low cost estimates (e.g., for services a CETC might be purchasing from ILECs) or unrealistically high costs (e.g., for support funds that a CETC might receive). Indeed,

³⁴ Lack of subscription is an indication that the service's value does not exceed its cost. If there are significant network externalities for broadband services, then their provision may be efficient even if it is unprofitable for the service provider.

one can always claim their cost study is more forward-looking than another if it provides cost estimates that are lower than the other!

Many small ILECs are average schedule companies – this is a form of incentive regulation where their earnings depend on the actual costs of similarly situated cost companies, and are divorced from their own particular cost experience. This means that companies can retain the benefits of cost-reducing innovations that lower their costs relative to those of similar carriers. These costs are a sort of proxy for each company's costs – but one based on actual operating experience rather than a hypothetical and unauditible measure of nobody's costs.

Dr. Parsons provides two additional reasons to believe that RORR is not all that inefficient. First, he notes that there are often long lags in the adjustment of retail rates: "Retail prices for many firms have not changed for years, and in many instances decades."³⁶ If retail rates rarely adjust, firms can retain any cost reductions for extended periods of time – similar to a price cap regime.³⁷ Second, Dr. Parsons claims that "ILEC standards and constraints should be relaxed" due to competitive pressures from new

³⁵ Indeed, Attachment C to the Western Wireless submission is evidence that embedded costs *can* be audited, unlike forward-looking economic costs.

³⁶ Parsons, at page 4.

³⁷ Dr. Parsons' consideration of "regulatory lag" is far too simplistic and somewhat inconsistent. Regulatory lag provides relatively efficient incentives under RORR, and this might apply to intrastate operations. Since interstate rates are revised annually, based on actual cost experience, any criticism of RORR would only apply to interstate operations. Given the prevalence of resources that are common to both intrastate and interstate services it is difficult to see how a carrier would exercise their purported ability to "pad" costs in one jurisdiction but not the other. Further, there is more competitive pressure on interstate access charges since there are a variety of ways to bypass these charges (including wireless interstate minutes).

entrants.³⁸ Of course, to the extent that there is such competitive pressure, they also provide incentives for firms to minimize costs.

Dr. Parsons notes the dramatic shift from RORR to price caps for the large ILECs and contrasts it with the retention of RORR for most small ILECs. There is a reason for this differentiated history. The efficiency gains from replacing RORR with price caps for the many small ILECs have not been demonstrated. It is also worth noting that while "TA96 suggests a break from ROR-based methods of pricing for interconnection and UNEs"³⁹ Congress explicitly considered, and rejected, a requirement that states employ price cap regulation at the retail level. This was part of the original Senate legislation (S.652) but was dropped when the Act finally passed both houses of Congress.

The Western Wireless appeal to the inefficiency of RORR is a ruse. Comparison of the real costs and benefits of price caps and RORR when applied to small ILECs is different than theoretical comparisons of these regulatory regimes in their purest forms. As Victor Goldberg pointed out in a classic article:

"The perspective afforded by the administered contracts framework suggests that the economist's case against regulation has been overstated. Many of the problems associated with regulation lie in what is being regulated, not in the act of regulation itself. Further, many of the perceived failures of regulation (for example, entry restrictions) can be seen to have a plausible efficiency rationale."⁴⁰

³⁸ Parsons, at page 6.

³⁹ Parsons, at page 4.

⁴⁰ Victor P. Goldberg, "Regulation and administered contracts," *The Bell Journal of Economics*, Autumn 1976, 426-448.

Goldberg draws attention to the nature of the service being regulated. He provides the example of a food service contract wherein a private contractual agreement would entail many of the same features as traditional regulation. Quality of service, access to capital, and costs of operation are all concerns in a private contractual framework just as they are under regulation. In general, Goldberg says that services that require long-term investments require a balance between "the right to serve" and "the right to be served." No regulatory form can avoid the necessity of striking this balance.

A case in point is the idea of auctions for universal service obligations. In theory, auctioning high cost support to the lowest bidder might lead to a reduction in the costs of providing universal service in rural areas. It might also lead to decreased quality of service, less innovation, litigation over extension of service to new customers that choose to build houses in remote areas, etc. Imagine competitive bidding between a wireless ETC and a landline ETC for the support to serve a high cost area. Support amounts will be minimized by awarding the support to the lowest bidder. What then? Myriad conditions would need to be included in the contract. Extensive monitoring would be required. The auction winner would require a service contract long enough to justify investment. The public would need to be protected against a carrier that does not provide adequate service. In short, all of the issues raised by traditional RORR would still be faced even if auctions for high cost support were to be adopted. Only a comparative analysis that recognizes the nature of the service can provide guidance as to whether or not such a mechanism is good public policy. Similarly, only a comparative analysis that recognizes the nature of universal service obligations can provide meaningful input to

questions such as whether and how support should be received by additional carriers in rural service areas.

6. Competitive Neutrality is not a useful concept for awarding wireless carriers the same support as ILECs. Wireless and wireline services are situated differently in important ways, and leveling the playing field requires a multidimensional policy approach.

It is wrong to think of wireless and wireline services as the same. There are important dimensions in which they differ, including:

- They have different cost structures. Landline technologies have large economies of scale compared with wireless technologies.⁴¹
- They have different quality attributes.⁴² The main advantage of wireless services is mobility, a trait that cannot be matched by landline services. On the other hand, wireline quality of service and availability are regulated by state regulatory commissions but mobile services are generally not.
- They have different service areas – in fact, the meaning of service area is different for the two. Billing address generally is the same as service address for wireline providers. Billing address has little meaning to a wireless provider in terms of where they need to provide service.
- They have different service qualities. Landline services generally receive high customer service ratings. Wireless services often receive poor ones.⁴³
- They have different pricing structures. Landline services generally include unlimited calling within the local area, while wireless services have a variety of usage-based pricing schemes.
- They have different revenue patterns. Dr. Parsons cites switched access charges as not competitively neutral – ILECs typically get 40% of their revenue from access charges while CMRS providers “receive virtually no switched access

⁴¹ Evidence of this appears in the *CMRS Competition Report, Eighth Report*, July 14, 2003 issued by the FCC. Paragraphs 112-113 reveal that there are 3.2-3.3 mobile competitors on average in rural areas, with 2.7 on average in the most rural category (<25 people/mi²). Paragraph 118 notes that rural and urban mobile prices are similar (despite the lack of USF). Clearly, the cost structure for mobile carriers in rural areas differs from that of wireline carriers.

⁴² See OPASTCO Reply Comments, June 3, 2003, CC Docket No. 96-45, FCC 03J-1, section III. D., pages 13-15.

⁴³ Complaints related to wireless service quality increased significantly during the 1st quarter of 2003, compared to the prior quarter. See, *Quarterly Report on Informal Consumer Inquiries and Complaints for the First Quarter of 2003*, FCC Consumer and Governmental Affairs Bureau (rel. May 30, 2003).

revenues from long-distance providers.”⁴⁴ Dr. Parsons does not note that Western Wireless receives 25% of its revenues from roaming agreements, a source not available to ILECs. In fact, CMRS providers receive reciprocal compensation payments for terminating traffic. They *choose* to negotiate carrier-specific long-haul transit rates and they can *choose* whether or not to charge access fees. In short, they have the freedom to adopt the same rate structure as ILECs if they want – what is different is that regulators do not constrain their pricing.

- They have different public policy constraints. Wireless carriers do not have carrier-of-last-resort obligations. This includes the requirement to build and maintain network facilities to serve all customers within the service area – facilities that may be relied upon by CETCs to provide coverage in those same areas. Wireless carriers do not have to provide equal access to long-distance carriers. Wireless carriers also have a different timetable for deploying local number portability. Wireless carriers are generally unregulated in their pricing, while landline carriers have heavily regulated pricing structures.
- As technologies evolve, the services that can be supported by each will continue to differ. Connection speeds, bundled services, call management services, etc. are likely to be different for wireless and landline technologies.

If “competitive neutrality” is applied to these technologies, then they should be equalized in all dimensions, not only the access to high cost support. The substitutability of wireless and wireline services in rural areas is largely a fiction. There is mounting evidence that wireless *minutes* are being substituted for landline *minutes*. This is different than evidence that wireless *service* is substitutable for landline *service*. There is some evidence that wireless services have a modest degree of substitution for 2nd lines, but little evidence that there is significant substitution for primary lines.⁴⁵

This is not to say that wireless services are necessarily adequate in rural areas. Whether or not there should be a support mechanism for wireless services in rural areas is a

⁴⁴ Parsons, at pages 6-7.

⁴⁵ The best evidence to date can be found in G.A. Woroch, M. Rodini, and M. Ward, “Going Mobile: Substitutability between Fixed and Mobile Access,” forthcoming in *Telecommunications Policy*, 2003. This study, exclusively focused on substitution in access, finds moderate substitutability between mobile service and 2nd lines and very little substitutability for primary lines. Notably, the study did not have a geographic dimension in the data, so it is not possible to differentiate between rural and urban areas. The

separate public policy question -- one that must recognize the myriad differences in services offered, service quality, regulatory constraints, and service provider costs. At a minimum, any use of the USF by wireless ETCs must be based on their own cost structure and not the ILECs.

7. Conclusions: Western Wireless proposes an inefficient regulatory policy based on flawed economic reasoning.

The Western Wireless case presented by Dr. Parsons is not a step in the direction of economic efficiency. There is nothing in the Western Wireless proposal to ensure that wireless services become substitutable for wireline services. Thus, Dr. Parsons applies the principle of competitive neutrality in a one-sided manner in order to rationalize financial support for wireless carriers without them having to show the need for it.⁴⁶

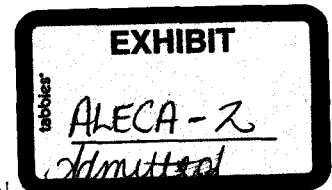
The combination of policies currently in effect is untenable: Wireless carriers have been designated as ETCs and they have access to high cost support based on the ILEC's costs. The result is an increase in the USF and increasing political and economic pressure on these important funds, i.e., lower economic efficiency. Multiple ETCs may undermine the financial viability of rural ILECs. This was clearly not the intent of the 1996 Act. The magnitude of the problem cannot easily be contained. Competitive neutrality in the mobile service market would almost certainly demand CETC status for all of the CMRS providers serving a rural area (three on average) once it is received by any one of them.

FCC Eighth CMRS Competition Report also notes the difference between substitution in usage and substitution in access.

Rural America and low income consumers can probably use support for all these services. In a world of limited resources, however, efficiency demands that we not unnecessarily increase the costs of these programs.

At a minimum, if wireless carriers are to be designated as ETCs, they should be equalized in all other respects – service territory, quality of services, regulatory flexibility/constraints, and pricing structures. Their support should be based on their own costs, not on the ILEC's costs. In that way, society's cost of universal service is potentially reduced if wireless carriers can provide the same services for less cost – a real increase in economic efficiency.

⁴⁶ Dr. Parsons suggests that wireless carriers would not get a "windfall" based on Western Wireless' losses (at page 8). Of course, profits or losses have nothing to do with whether a particular policy creates a windfall for a particular industry participant.



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of NPCR, Inc. d/b/a Nextel
Partners for Designation as an Eligible
Telecommunications Carrier Under 47 U.S.C.
§214(e)(2)

ISSUE DATE: December 1, 2003

DOCKET NO. PT-6200/M-03-647

ORDER DENYING WITHOUT PREJUDICE
NEXTEL'S APPLICATION FOR ETC
DESIGNATION

PROCEDURAL HISTORY

On April 25, 2003, NPCR, Inc. d/b/a Nextel Partners (Nextel) submitted its original filing asking the Commission to designate it as an eligible telecommunications carrier (ETC) for the purpose of receiving support from the federal universal service fund.

On May 5, 2003, Citizens Telecommunications Company of Minnesota, Inc. (Citizens) and the Minnesota Independent Coalition (MIC) filed challenges to the completeness of Nextel's petition. Nextel responded to the challenges on May 12, 2003.

By May 15, 2003, the Commission had received comments from Citizens and the Minnesota Department of Commerce (the Department). The parties argued that Nextel's filing is inadequate.

On July 17, 2003, the Commission met to act on Nextel's petition. Following discussions with the other parties, Nextel agreed at the Commission meeting to file supplemental information concerning its service offerings, facilities and advertising plan. Nextel also agreed that the 180-day timeline would begin upon its making a supplemental filing. The Commission agreed to defer consideration of Nextel's ETC petition until the record was more fully developed.

On July 28, 2003, Nextel submitted a supplemental filing to the pending petition.

On August 18, 2003, the Department and Citizens filed comments.

On August 20, 2003, the Commission issued its ORDER REQUIRING ADDITIONAL FILINGS AND VARYING TIME PERIOD.

On August 28, 2003, MIC and Nextel filed reply comments.

The Commission met on October 23, 2003 to consider this matter.

FINDINGS AND CONCLUSIONS

I. NEXTEL'S PETITION

Nextel asked the Commission to designate it an eligible telecommunications carrier (ETC) so that it can receive financial support from the federal universal service fund. Nextel stated that the requirements for ETC designation are set forth in 47 U.S.C. § 214(c)(1)-(2), 47 C.F.R. § 54.101, and Minn. Rules, Part 7811.0100, subp. 15. The Company argued that it met all the requirements for designation. Specifically, Nextel asserted that (1) it is a common carrier as required by 47 U.S.C. § 214(e)(1), (2) it provides each of the supported services identified by the Federal Communications Commission (FCC), and (3) it will meet all service and advertising obligations of an ETC.

On May 12, 2003, Nextel replied to Citizens' and MIC's objections that Nextel's petition was incomplete for failure to provide certain information. Nextel maintained that its petition was complete because it provided the items listed in the relevant rule, Minn. Rules, Part 7811.1400, subp. 4. While Nextel acknowledged that in two previous ETC cases the Commission had requested the additional items cited by MIC and Citizens it argued that this did not mean that these items were now filing requirements. Nextel stated that although it was not required to do so, it would voluntarily provide some of the information mentioned by MIC and Citizens: information regarding its service offerings, facilities, and advertising plan.

On July 28, 2003, Nextel supplemented its petition. The Company 1) clarified that Nextel Partners and Nextel Communications jointly market the "Nextel" brand name throughout their national service area; 2) argued that while it does not offer a service comparable to other ETCs' universal service offering, all of its conventional service plans qualify for universal service funding because they contain the nine supported services and are priced to rural customers at the same competitive price charged by Nextel Communications in the metro areas; 3) described its Minnesota facilities and service area; 4) submitted its advertising plan and discussed its commitment to advertise its service offerings throughout its Minnesota service area; 5) provided its standard custom service agreement; and 6) reaffirmed its arguments why designating it an ETC will benefit the public.

II. THE LEGAL STANDARD

Applications for ETC status are governed by federal and state law.¹ Section 214 of the Telecommunications Act of 1996 requires an ETC to offer certain designated services throughout

¹ 47 U.S.C. §§ 254, 214; 47 C.F.R. § 54.101; Minn. Rules parts 7811.1400 and 7812.1400. The fact that this Order analyzes and denies the petition based on provisions of the federal law does not negate the fact that there are also state standards and conditions to bring to bear on a petition for ETC status. For instance, while 47 U.S.C. § 214(c)(2) requires a public interest finding only when an applicant seeks ETC designation in an area served by a rural telephone company, Minn. Rules, Part 7812.1400, subp. 2 requires a public interest determination when a CLEC seeks ETC status in areas served by non-rural as well as rural telephone companies. See *In the Matter of the Petition of WETEC LLC dba Unitel Communications, Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5614/M-03-1051, ORDER (November 26, 2003).

its ETC-designated service area, use its own facilities or a combination of its own facilities and resale of another carrier's service in providing these services, and advertise the availability and price of these services.² While the list of designated services may change over time,³ FCC rule § 54.101(a) currently designates the following services:

1. voice grade access to the public switched network
2. local usage
3. touch-tone service or its functional equivalent
4. single-party service
5. access to emergency services, including 911 and enhanced 911
6. access to operator services
7. access to interexchange services
8. access to directory assistance
9. toll limitation for qualifying low-income customers

This Commission has the responsibility for designating ETCs in Minnesota except where it lacks jurisdiction over an applicant.⁴

An applicant for ETC status must make several showings before it is deemed eligible for ETC status under the Act. These requirements are found in 47 U.S.C. § 214(e). First, the applicant must be a common carrier. Second, the applicant must offer the services that are supported by federal universal service support mechanisms under 47 U.S.C. § 254(e). Third, the applicant must do so either using its own facilities or a combination of its own facilities and resale of another carrier's services. Fourth, the applicant must offer the identified services throughout the service area for which the designation is received. Fifth, the applicant must advertise the supported services and charges therefor throughout the service area for which the designation is received using media of general distribution.⁵

Once a state commission determines that an applicant meets these five requirements, the applicant is entitled to receive ETC status unless the applicant is seeking to serve exchanges in which the incumbent local exchange carrier is a rural telephone company. If the applicant is seeking ETC status in an area served by a rural telephone company, the state commission must make an additional finding that the designation is in the public interest.

III. COMMISSION'S ANALYSIS AND ACTION

The Commission is required to confer ETC status on Nextel if it finds that the Company meets the requirements of 47 U.S.C. 214(c)(1)(A) and (B) and, since Nextel seeks designation in areas served by rural telephone companies, the public interest standard of 47 U.S.C. 214(c)(2).

² 47 U.S.C. § 214(c)(1).

³ 47 U.S.C. § 254(c)(1).

⁴ 47 U.S.C. § 214(c)(6).

⁵ These five requirements are established in 47 U.S.C. § 214(e)(1).

Having reviewed the record developed in this matter and heard the parties' oral arguments, the Commission finds that Nextel has failed to meet the service and advertising requirements of 47 U.S.C. § 214(c)(1), as explained more fully below.

A. Requirement to "Offer Services" Throughout the Service Area

An ETC must offer the services that are supported by federal universal support mechanisms under section 254(c)(1) throughout the service area for which the designation is received.⁶ The FCC has advised in a Declaratory Ruling that a carrier requesting ETC status is not required to provide ubiquitous service at the time of its application.⁷ In the same Ruling, however, the FCC clarified that applicants must support their assertions of ability and willingness to provide service throughout the service area with credible evidence:

We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.⁸

In this case, Nextel has not adequately supported the assertion in its verified petition that it will meet all service obligations of an ETC. Nextel has acknowledged that there were large areas of its service area that it cannot serve at present. The Company presented no plan for expanding its service capabilities and simply stated that receipt of the universal service funding would change (in unspecified ways) the economic model that might (no guarantee or analysis to show reasonable likelihood) make expansion (of unspecified extent) into some (unspecified) areas possible. The extent to which the economic model would change was not specified. No guarantee of expansion or analysis was provided to demonstrate the likelihood of expansion. No areas were identified for expansion. At the same time, the Company stated that the cost of installing one additional signal tower was approximately \$250,000 to \$300,000 and that the annual revenue initially anticipated from the universal service fund is approximately \$100,000.

In these circumstances and based on this record, therefore, the Commission finds that Nextel has failed to demonstrate that it is willing and able to serve "throughout the service area for which the designation is received . . ." as required of an ETC by 47 U.S.C. § 214(e)(1).⁹

⁶ 47 U.S.C. § 241(c)(1).

⁷ *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket 96-45, FCC 00-248, 15 FCC Rcd at 15175, Paragraph 17 (August 10, 2000) (Declaratory Ruling).

⁸ Declaratory Ruling, Paragraph 24.

⁹ In its July 31, 1998 Order in Docket No. P-5508/M-98-561, the Commission denied a petition for ETC status by Crystal Communications, a Minnesota competing local exchange company (CLEC), on the basis that the record in the case was insufficient to conclude that the applicant would offer the required services throughout the service area for which the designation

B. Requirement to Advertise the Supported Services Throughout the Service Area

An applicant must also be willing and able to **advertise** the availability of and the charges for the services that are supported by the federal universal service support mechanisms 1) throughout the service area for which ETC designation is sought and 2) using media of general distribution.¹⁰

In its petition filed April 24, 2003, Nextel stated that it would advertise the availability of the supported services and charges therefor using media of general distribution. Nextel stated that after being designated an ETC, it would continue to advertise its services in designated areas and work with the Department to develop an advertising plan consistent with what other ETCs implemented.

The Department objected that Nextel did not include an advertising plan nor had it provided detail regarding its plans specifically to advertise its universal service offering(s) and the availability of Lifeline and Link-Up for qualifying customers, either to advertise the availability of a basic universal service offering or to advertise the availability of the nine supported services throughout its proposed service area.

In its May 12, 2003 reply to MIC's and Citizens' challenge to the completeness of its petition, Nextel stated that it would file supplemental information, including an advertising plan. On July 28, 2003, it filed supplemental information, including a document entitled Advertising Plan of NPCR, Inc.

On August 18, 2003, the Department argued that the advertising information provided by Nextel was inadequate. The Department stated that Nextel had failed to provide a plan to advertise a basic universal service offering or to advertise the availability of the nine supported services throughout its proposed service area.

The Commission finds that Nextel fails to meet the advertising requirement of 47 U.S.C. § 214(e)(1)(B) because it has not submitted an advertising plan adequate to demonstrate its intent and ability to advertise the availability of the nine supported services throughout its proposed service area. In light of the Company's inability to serve throughout its requested area, as found above, Nextel's assertion that it will advertise throughout the area as required by law is not an adequate substitute for submitting an actual advertising plan whose scope and detail demonstrates the Company's intent and capability to advertise the availability of the nine supported services throughout its proposed service area.

Because the Nextel application fails the "advertise" requirement of 47 U.S.C. § 214(e)(1)(B) for reasons explained in the preceding paragraph, it is unnecessary to reach the further issue whether it

was requested. *In the Matter of Crystal Communications' Petition to Become an Eligible Telecommunications Carrier*, Docket No. P-5508/M-98-561, ORDER GRANTING IN PART, DENYING IN PART, STATUS AS ELIGIBLE TELECOMMUNICATIONS CARRIER (July 31, 1998), at page 5.

¹⁰ 47 U.S.C. § 214(c)(1).

also fails that requirement because it did not include an advertising plan for a basic affordable universal service offering.¹¹

C. Affordability: a Public Interest Consideration

To date, Nextel has refused to offer, let alone advertise, a particular universal service offering as distinguished from any of its other service offerings. Nextel has asserted that requiring an applicant to offer a lower cost "affordable" rate would be impermissible rate regulation. Nextel argued that although offering and advertising such a service (a separate and distinct lower cost universal service offering) was the way that past applicants¹² have chosen to meet the "offer and advertise" requirements of 47 U.S.C. § 214(e), the law does not require that an applicant make such an offering in order to qualify for ETC status. In addition, Nextel asserted that there are no standards on what can be considered affordable and nothing in the record to indicate that Nextel's offerings were not affordable.

Nextel stated that, even though it offered no particularized lower cost universal service offering, each of its regular, nationally offered and advertised offerings provide all the required functionalities, i. e., the nine supported services listed by the FCC in 47 C.F.R. § 54.101(a). As a consequence, Nextel argued, offering its nationally offered set of services meets the "offer" requirement of 241(c)(1)(A) and advertising those services meets the "advertise" requirement of 241(c)(1)(B).

The Department countered that in the context of ETC designation for receipt of public funds requiring an applicant to offer at least one "affordable" (in the sense of "lower cost") service that contains some level of local service does not constitute prohibited rate regulation. The Department cited 47 U.S.C. 254(i):

The [Federal Communications] Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

The Department noted that the FCC rules permit a state commission to designate additional qualifying ETCs for areas served by a rural telephone company only if the state commission finds that the designation of more than one carrier is in the public interest. The Department noted that the FCC has not defined the public interest factors that the state Commission may or should consider when designating an additional ETC in a rural service area. According to the Department,

¹¹ Not reaching the affordability issue at this time in the context of the advertising requirement is also appropriate because, as explained next in section C, affordability is a public interest consideration which is reached only if Nextel's next application for ETC status meets the threshold ETC requirements of 47 U.S.C. 214(e)(1)(A) and (B).

¹² Western Wireless Corporation (fka Minnesota Cellular Corporation) in Docket No. P-5695/M-98-1285; Tekstar Communications, Inc. in Docket No. P-5542/M-01-1865; Midwest Wireless Communications, L.L.C. in Docket No. P-573/AM-02-686; and RCC Minnesota, Inc. and Wireless Alliance, LLC (filing jointly as affiliates of Rural Cellular Corporation) in Docket No. PT-6182, 6181/M-02-1503.

however, there can be no doubt that affordability is a public interest factor. The Department noted that state Commissions have been given the primary role in evaluating the affordability factor. The Department cited the following FCC statement:

We agree with the [Federal-State] Joint Board [on Universal Service] that states should exercise initial responsibility, consistent with the standards set forth above, for determining the affordability of rates. . . . As the Joint Board determined, the unique characteristics of each jurisdiction render the states better suited than the Commission to make determinations regarding rate affordability.¹³ [Bracketed material added.]

Based on the parties' arguments and a review of the statutory and regulatory framework, the Commission finds that affordability is an appropriate public interest factor to consider during any public interest evaluation of an application from Nextel.

The public interest evaluation of an application such as Nextel's, however, is properly conducted **after** the applicant is found to have met the threshold statutory requirements of 47 U.S.C. § 214(c)(1).¹⁴

As noted previously in this Order, Nextel has not met all those requirements. Therefore, the public interest factors applicable to Nextel's application (which include affordability and service quality) are not ripe for consideration at this time. Accordingly, the Commission will make no findings at this time whether, for example, the public interest requires Nextel to provide, as the Department has argued, at least one affordable lower cost alternative service offering that includes some level of local calling.

IV. LOOKING AHEAD

The denial of Nextel's application will be without prejudice. In the event that Nextel refiles with new information that persuades the Commission that it meets the threshold requirements of

¹³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, "Report and Order," 12 F.C.C. Rcd 8776 (rel. May 8, 1997) ¶ 108 aff'd in part and reversed in part, *Texas Office of Pub Utility Counsel v. FCC* 183 F.3d 393 (5th Cir. 1999) ¶ 118.

¹⁴ Analysis under 47 U.S.C. § 214(c) of applications for ETC status in an area served by a rural telephone is a two step process. The first step is to determine whether the applicant meets the threshold statutory requirements of 47 U.S.C. § 214(c)(1)(A) and (B). If so, the second step is to determine whether the applicant satisfies the public interest standard of 47 U.S.C. § 214(c)(2). The two-step analysis followed by the Commission in this Order is consistent with the approach used by the Administrative Law Judge (ALJ) and by the Commission in the two most recent ETC applications: *Midwest Wireless Communications*, Docket No. PT-6182, 6181/M-02-1503 and *RCC Minnesota, Inc./Wireless Alliance*, Docket No. PT6153/AM-02-686.

47 U.S.C. § 214(e)(1)¹⁵, the Commission will undertake the public interest evaluation of that application.

An applicant for ETC designation bears the burden of proof on all the federal and state requirements and considerations applicable to its application. Information adequate to meet the filing requirements on Minn. Rules, Part 7811.1400, subp. 4 is not necessarily adequate to meet the applicant's burdens of proof and persuasion on all issues relevant to the application. An applicant, therefore, is advised to build a complete record containing much information beyond the Commission's filing requirements.

In previous proceedings involving applications for ETC designation in areas served by rural telephone companies, the Commission has directed applicants to provide several specific items beyond what was required to meet the initial filing requirements.¹⁶ With no attempt to be comprehensive, the Commission has listed in footnote 14 two informational items relevant to meeting the Phase 1 threshold requirements.¹⁷ The Commission believes that the following information would be relevant to the public interest evaluation:

1. a detailed description of a basic universal service offering or affordable alternative or an explanation of why it would be in the public interest to give an applicant access to universal service funding if that applicant does not offer an affordable lower cost service that specifically preserves and advances universal service;
2. a tariff or price list showing the list, prices and terms of offered services including local usage levels and calling areas for which the applicant seeks universal service support, including the terms and rates for the basic universal service package, along with references to Lifeline and Link-Up and other services which may be added to the basic universal service package;

¹⁵ Information relevant to those determinations would include 1) an advertising plan specific to a basic universal service offering, the nine-supported services, and the availability of Lifeline and Link-Up for qualifying customers and 2) a list of facilities used to provide services in the area in which Nextel seeks certification.

¹⁶ In addition, in its Order designating each of Minnesota's incumbent local exchange companies (ILECs) as ETCs, the Commission required each ETC to submit an advertising plan, including a description of available services and their rates; the geographic area where those services are available; the medium of publication of the advertising, including the names of, and geographic areas served by, the newspapers in the plan, and the size and the type of the advertising. *In the Matter of the Request by Members of MIC for Designation as an Eligible Telecommunications Carrier and Temporary Suspension of Certain Toll Restrictions* and *In the Matter of the Requests by Other Incumbent LECs for ETC Designations*, Docket No. P-999/M-97-1270, ORDER DESIGNATING PETITIONERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS (December 23, 1997).

¹⁷ The Phase 1 threshold requirements appear in 47 U.S.C. § 214(c)(1)(A) and (B).

3. a customer service agreement that defines a service quality plan consistent with the Company's claim to provide high quality services, including dispute resolution policies, network maintenance policies, procedure for resolving service interruptions, any customer remedies offered, and Nextel's billing, payment, and deposit policies;
4. a list of and Nextel's commitment to its federal obligations regarding its service area;
5. information typically gathered from ETCs in the annual certifications;
6. description of the process the Company will use to track and make available to the Commission and the Department, upon request, the following: (a) held orders for customer premises equipment and for either the basic universal service plan or any services the Company relies on to meet the "offer" requirement of 47 U.S.C. § 214(e)(1)(A) for more than 30 days and (b) customer complaints or disputes related to service quality, including reports of interrupted service for the basic universal service plan and for any service the Company relies on to meet the "offer" requirement of 47 U.S.C. § 214(e)(1)(A).

This Order will not contain a directive for Nextel to include any particular information with its next application because to do so would be premature. Moreover, the Department, any intervening party, and Commission Staff can submit Information Requests to the Company for any information they deem relevant. As in previous proceedings, however, it is unlikely that the Commission will begin the 180 day processing period prescribed in Minn. Rules, Part 7811.1400, subp. 12 until the information referenced has been filed.¹⁸

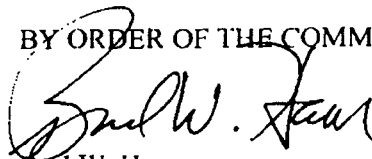
ORDER

1. Nextel's application for designation as an eligible telecommunications carrier (ETC) for the purposes of receiving universal service funding is denied without prejudice.

¹⁸ The Commission took this view in the two most recent ETC proceedings. See *In the Matter of the Petition by RCC Minnesota, Inc. and Wireless Alliance, L.L.C. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Docket No. PT-6182/M-02-1503, ORDER REQUIRING ADDITIONAL FILING, VARYING TIME PERIOD AND NOTICE AND ORDER FOR HEARING (November 4, 2002) at pages 4 and 9; and *In the Matter of the Petition by Midwest Wireless Communications, L.L.C. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Docket No. P-573/AM-02-686, ORDER REQUIRING ADDITIONAL FILINGS, VARYING TIME PERIOD AND NOTICE AND ORDER FOR HEARING (July 5, 2002) at pages 3-5 and 8.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

A handwritten signature in dark ink, appearing to read "Burl W. Haar", is written over the printed name.

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice) or 1-800-627-3529 (TTY relay service).

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 1st day of December, 2003 she served the attached

ORDER DENYING WITHOUT PREJUDICE NEXTEL'S APPLICATION FOR ETC
DESIGNATION.

MNPUC Docket Number: PT6200/M-03-647

XX By depositing in the United States Mail at the City of St.
Paul, a true and correct copy thereof, properly enveloped
with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Ann Pollack
Eric Witte
Mark Oberlander
AG
Lillian Brion
Mary Swoboda
Jessie Schmoker
Linda Chavez - DOC
Julia Anderson - OAG
Curt Nelson - OAG

Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 1 day of

December, 2003

Robin Benson
Notary Public



In the Matter of NPCR, Inc., Petition
for Designation as an eligible
Telecommunications Carrier
1 Service List

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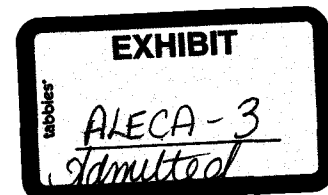
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION)
OF ALLTEL COMMUNICATIONS, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

DOCKET NO. T-03387-03-0316

DIRECT TESTIMONY OF JUDY D. BRUNS

ON BEHALF OF THE

ARIZONA LOCAL EXCHANGE CARRIERS ASSOCIATION

DECEMBER 29, 2003

1 **Q-1. Please state your name and business address.**

2 **A-1.** My name is Judy D. Bruns. My business address is 752 East Maley, Willcox, Arizona
3 85644.

4 **Q-2. What is your business or occupation?**

5 **A-2.** I am employed by Valley Telephone Cooperative, Inc., ("VTC") as its Chief Executive
6 Officer. I am also the Chief Executive Officer of Copper Valley Telephone ("Copper
7 Valley") and the Chief Executive Officer of Valley Telecommunications Company
8 (doing business as "Valley Telecom Cellular"), both of which are subsidiaries of VTC.

9 **Q-3. Please briefly describe the business of VTC, Copper Valley and Valley Telecom.**

10 **A-3.** VTC was formed in 1962 in order to bring basic telephone services to rural areas of
11 Arizona and New Mexico where costs and demographic considerations discouraged
12 investment by larger telecommunications companies. VTC provides local exchange
13 service and other telecommunication services to rural customers in the Arizona
14 exchanges of Portal, Sunizona, Pearce, Bonita, Bowie and San Simon, which are located
15 in portions of Cochise and Graham Counties. VTC also provides telecommunications
16 services to customers in the New Mexico exchanges of Playas, Columbus, Animas and
17 Rodeo, and in the Mexican exchange of Las Polomas. VTC's operations are spread over
18 a large geographic area with a subscriber-per-route-mile density of only 1.5 and a
19 subscriber-per-square-mile density of only 0.5.

20 VTC has met and maintained its objective to bring universal service to the
21 communities it serves. VTC is committed to maintaining universal service in the
22 customer-owned cooperative service area as technology advances and the definition of
23 universal service evolves. VTC's commitment to bring wireless service to rural areas is
24 reflected by the company's investment and deployment of cellular service in some of the
25 most rural areas of Arizona. VTC's service quality attests to the fact that, unlike larger
26

1 non-LEC wireless service providers, the company's signal does not disappear as you get
2 off the main highways.

3 VTC's commitment to rural universal service is further evidenced by its
4 formation of subsidiary Copper Valley to acquire the Arizona exchanges of Clifton,
5 Duncan, Elfrida and York Valley from Qwest Corporation ("Qwest") in 1995, and the
6 subsequent investment in those exchanges to upgrade the quality of universal service
7 available to Copper Valley subscribers.

8 Valley Telecom Cellular owns and operates Arizona Rural Service Area 6-East,
9 a cellular network serving portions of southeastern Arizona. Valley Telecom Cellular
10 also provides Internet service, paging service and business systems services.

11 **Q-4. Have you previously provided testimony or actively participated in proceedings**
12 **before the Arizona Corporation Commission?**

13 **A-4.** Yes. I have testified in a number of proceedings before the Commission and
14 participated in several workshops conducted by the Commission. My testimony in
15 those proceedings is a matter of public record.

16 **Q-5. On whose behalf are you testifying in this proceeding?**

17 **A-5.** I am testifying on behalf of the following members of the Arizona Local Exchange
18 Carriers Association ("ALECA"):

- 19 • Arizona Telephone Company
- 20 • CenturyTel
- 21 • Copper Valley Telephone
- 22 • Frontier, a Citizens Communications Company
- 23 • Midvale Telephone Exchange
- 24 • Navajo Communications
- 25 • South Central Communications
- 26 • Southwestern Telephone Company

- Table Top Telephone Company
- Valley Telephone Cooperative

In addition, the following ALECA members support this filing, although each is tribally-owned, and as such, is not subject to the jurisdiction of the Commission:

- Fort Mojave Telephone Company
- Gila River Telecommunications
- San Carlos Apache Telecom Utility
- Tohono O'Odham Utility Authority.

I am the current President of ALECA. ALECA petitioned to intervene in this proceeding and was granted intervener status by procedural order dated August 21, 2003.

Q-6. What is ALECA?

A-6 ALECA is a non-profit corporation whose members include most of the rural local exchange carriers ("LECs") providing telephone service in Arizona.

Q-7. Do all of the ALECA member companies provide service in rural areas of Arizona?

A-7. Yes, they do. In fact, each of the ALECA member companies provides telephone exchange service, including exchange access, to fewer than 50,000 access lines or otherwise provides telephone exchange service to a LEC study area with fewer than 100,000 access lines within the State of Arizona. Accordingly, each ALECA member is a rural telephone company for purposes of the Communications Act of 1934, as amended by the 1996 Telecommunications Act (the "Act"), and each ALECA member has been designated as an Eligible Telecommunications Carrier ("ETC") within its respective service area.

Q-8. What is the purpose of your testimony?

A-8. The purpose of my testimony is to demonstrate that there are substantial questions of

1 fact and policy regarding the ability of ALLTEL Communications, Inc., ("ALLTEL") to
2 fulfill the requirements and criteria required to be designated an ETC in the service
3 areas of ALECA member companies. I believe that I can offer the Commission a
4 unique perspective on Alltel's application because of my operational responsibilities
5 over VTC's wireline operations and Valley Telecom Cellular's wireless operations in
6 rural Arizona. As a rural wireless carrier, Valley Telecom Cellular has debated whether
7 to seek ETC status as ALLTEL has done. As a matter of equal protection and basic
8 competitive fairness, Valley Telecom Cellular will seek ETC status if ALLTEL is
9 designated an ETC in this proceeding. However, as I will address in my testimony,
10 there are overriding questions of sound telecommunications policy and public interest
11 that weigh against designation of more than one ETC in a rural telephone company
12 service area under the existing rules and regulations. These questions of policy and
13 public interest are currently pending before the Federal-State Joint Board ("Joint
14 Board") which should make recommendations to the Federal Communications
15 Commission ("FCC") early in 2004 regarding the designation of multiple ETCs in rural
16 telephone service areas. As the Commission is aware, the designation of additional
17 ETCs in rural telephone service areas requires a finding that the designation is in the
18 public interest. I respectfully urge the Commission to recognize that the rules and
19 framework under which it is making this required public interest determination will
20 change shortly. At a minimum, the public interest would be served by deferring
21 consideration of the ALLTEL petition until the release of decisions from the Joint Board
22 and FCC, which will certainly impact the public interest analysis in this proceeding.

23 **Q-9. Does your testimony address the request made by ALLTEL with respect to the**
24 **areas served by Qwest?**

25 **A-9.** No, not directly. While the underlying factual issues regarding ALLTEL's service
26 offerings may apply, I do not believe that Qwest is a rural telephone company under the

1 Act. Accordingly, the full extent of the analysis required by the Commission for the
2 ALLTEL application as it applies to the service areas of ALECA member companies
3 does not apply to the Qwest service area where the Commission is not entrusted with the
4 statutory requirement of finding that the public interest will be served by the
5 designation, as is required in rural telephone company service areas.

6 **Q-10. Would you summarize your testimony?**

7 **A-10.** Yes. First, the Commission must undertake a careful review to determine whether
8 ALLTEL has properly demonstrated that it will offer each of the services supported by
9 the universal service support mechanism as delineated in 47 C.F.R. § 54.101(a).
10 Second, the Commission must conduct a thorough evaluation of whether the public
11 interest will be advanced by designating ALLTEL as an additional ETC in the rural
12 areas served by the ALECA members. ALECA does not believe that the review
13 conducted by Utilities Division Staff regarding these two matters has been sufficiently
14 rigorous. Third, if the Commission designates ALLTEL an ETC, it should maintain
15 appropriate oversight and impose the same requirements applicable to the ALECA
16 member companies in their provision of universal service.

17 In addition, in light of the ongoing proceedings at the Joint Board and other FCC
18 proceedings affecting universal service, ALECA strongly urges that the Commission
19 delay action on ALLTEL's ETC request, or alternatively, make any such action
20 conditional and subject to modification depending on the outcome of the Joint Board
21 and FCC proceedings. If the Commission were to designate ALLTEL an ETC under
22 existing universal service rules, it may want to ensure that the designation is not relied
23 upon as one in perpetuity. Changes in the FCC's universal service rules could
24 significantly affect the public interest finding required by the Commission in
25 designating an ETC. For example, would the Commission find it in the public interest
26 to designate multiple ETCs in rural service areas if the federal universal service fund to

1 that rural Arizona area is capped, as some have proposed? Multiple ETCs dividing a
2 limited amount of universal service funds may not serve the public interest. The FCC
3 rules could also result in the need for funding from the Arizona Universal Service Fund
4 in the event of multiple ETC designations in rural areas if the federal fund is capped.

5 **Q-11. On what basis do you believe that the Commission should undertake a more**
6 **rigorous analysis than that undertaken by Utilities Division Staff?**

7 **A-11.** At least two FCC commissioners have raised the issue of whether states have, in fact,
8 undertaken the type of review that would ensure compliance with the requirements of
9 Section 214 of the Act prior to designating an additional ETC in a service area of a rural
10 telephone company. Specifically, as part of the FCC's July 14, 2003, action regarding
11 the definition of universal service, FCC Commissioners Abernathy and Adelstein jointly
12 stated as follows:

13 [W]e are concerned that the ETC designation process—and in particular
14 the public interest analysis—has been conducted in an inconsistent and
15 sometimes insufficiently rigorous manner. Providing federal guidance
16 on these issues will afford regulatory certainty to competitive ETCs, as
17 well as incumbent LECs. It will also help stabilize the funding
18 mechanism.

19 Therefore, it seems logical that if the need for a rigorous review is recognized and
20 fostered by federal regulators in order to ensure that the public interest is served, it only
21 seems reasonable that the approach should be applied here in Arizona to ensure that we
22 serve the overall interests of rural Arizonans, and not just the interests of carriers
23 seeking to serve their bottom line. Undertaking a rigorous review of the ALLTEL
24 application for ETC status is consistent with the Commission's duty to make a public
25 interest finding before designating ALLTEL an ETC.

26 **Q-12. What do you mean by the "public interest finding" required of the Commission?**

1 A-12. As the Commission is aware, a telecommunications carrier must be designated as an
2 ETC by the Commission in order for that entity to be eligible to receive federal USF
3 disbursements. This requirement is established in Section 214 of the Act. However,
4 the language of Section 214(e)(2) states that the Commission is not required to
5 designate an additional ETC within the service area of a rural telephone company,
6 including each of the ALECA member companies. If the Commission is inclined to
7 grant ETC status to an additional entity for a rural telephone company's service area, the
8 Commission is statutorily required to find that such designation is "in the public
9 interest." For the Commission's convenience, relevant portions of Section 214(e) of the
10 Act are attached to my testimony as Attachment "A."

11 **Q-13. What do you mean by your reference to designation of an ETC in the "service area**
12 **of a rural telephone company"?**

13 A-13. The service area is the "study area" of a rural telephone company. This could be
14 changed only by an affirmative action to establish a different geographic area as the
15 service area by the FCC in conjunction with its Joint Board addressing universal service.
16 "Study area," in turn, is the entire geographic territory of the specific rural telephone
17 company within which it operates and is that which is used for purposes of establishing
18 its federal USF disbursements. The service maps of the ALECA member companies are
19 on file with the Commission and ALECA believes that the Commission can and should
20 take official notice of them for purposes of this proceeding.

21 **Q-14. Does Section 214 of the Act provide any more guidance with respect to what the**
22 **Commission must do in its consideration of an application for ETC status?**

23 A-14. Yes it does, and the consideration is also related to the FCC's rules regarding the basic
24 services that must be provided by an ETC. In addition to the public interest
25 determination noted above, an ETC is required to demonstrate to the Commission the
26 following:

1 1. First, the applicant's service must meet nine specific service criteria set forth by
2 the FCC. An ETC must provide all of the following:

- 3 (i) voice grade access to the public switched telephone network;
4 (ii) local usage free of charge;
5 (iii) dual tone multi-frequency signaling or its equivalent;
6 (iv) single party service or its equivalent;
7 (v) access to emergency services, such as 911;
8 (vi) access to operator services;
9 (vii) access to interexchange service;
10 (viii) access to directory assistance; and
11 (ix) toll limitation for qualifying low-income customers -- toll limitation or
12 toll restriction and both Lifeline and Linkup.

13 These services are listed in 47 C.F.R. § 54.101(a).

14 2. Second, the applicant must advertise the availability of its universal service
15 offering throughout the entire study area of each rural telephone company where
16 the applicant seeks ETC status.

17 3. Third, the applicant must be designated to serve and must offer service
18 throughout the entire study area of the rural telephone company.

19 I note that these are minimum requirements established at the federal level and
20 applicable to each ETC. This Commission, and each state commission, has discretion to
21 apply additional requirements as a condition of designating a particular applicant as an
22 ETC to ensure that the public interest, as defined by the state-specific considerations, is
23 protected.

24 **Q-15. On what basis do you believe that the requirements you noted above are**
25 **"minimum" and that the Commission has "discretion" in establishing additional**
26 **requirements?**

1 A-15. First, and with respect to applicants in rural telephone company areas, the Act uses the
2 term "public interest" and "public interest, convenience and necessity." These are the
3 very same standards that the Commission has traditionally used to ensure that the
4 interests of all consumers within the State of Arizona are advanced. The Act does not
5 specify any limitation on the discretion of the state commission in this regard with
6 respect to the designation of additional ETCs in rural telephone company service areas.
7 Moreover, the FCC has not provided any specific direction or limitation imposed on the
8 state commissions regarding this determination. If anything, the FCC's July Order
9 reflects the intent and expectation of the FCC that each state will utilize its discretion to
10 protect the interests of its consumers in fostering the overall public interest and not
11 simply short term financial goals of companies seeking funding.

12 **Q-16. What types of considerations do you believe that the Commission should keep in**
13 **mind as it reviews this matter?**

14 A-16. Generally, in evaluating the impact on the public interest, the Commission should
15 consider the impact that the designation will have overall on rural Arizona consumers,
16 the impact on the federal USF program, and on the realistic ability to achieve universal
17 service objectives. In general, no customer of ALLTEL or any newly designated ETC
18 should be subject to lesser service quality or service standards than that customer would
19 receive from the incumbent rural telephone company ETC. Moreover, neither
20 ALLTEL nor any other additional ETC should receive federal USF unless it abides by
21 the same complaint procedures and oversight of service quality and consumer
22 protections as those procedures and processes required of the incumbent rural telephone
23 companies. As part of its review of the ETC application, the Commission must, as a
24 threshold matter, determine whether ALLTEL provides the nine universal service
25 components required by the FCC, as well as the ability to offer service throughout the
26

1 entire service area of each rural telephone company serving areas where ALLTEL seeks
2 ETC designation.

3 **Q-17. Wouldn't the approach of a rigorous application review that you are suggesting**
4 **amount to a barrier to entry?**

5 **A-17.** No, it would not. ALLTEL is already a CMRS provider and it does not require USF to
6 provide CMRS service or universal services. As a matter of fact, the distribution of
7 USF could not be a barrier to entry or provision of service for any carrier; the rural
8 telephone companies, including the ALECA members, are required to provide universal
9 service and they receive their universal service funding on the basis of a "two-year lag"
10 under the FCC's rules. In ALECA's view, the regulatory oversight undertaken by the
11 Commission in its effort to foster universal service becomes all the more necessary
12 when an entity seeks funds as a "universal service provider" within the rural areas of the
13 state. The choice of ALLTEL or any other ETC applicant to seek "universal service
14 provider" status (which is inherent in seeking designation as an ETC) should carry with
15 it the responsibility to comply with all applicable and relevant regulations affecting
16 quality of service and service provisioning within Arizona. If the Commission
17 considers granting ETC status to ALLTEL, then the ALECA members ask the
18 Commission to demonstrate that the "playing field" is truly level. Level is not simply a
19 matter of distributing funds to carriers purporting to be "universal service providers." If
20 a carrier wants the benefit of funding, it should fulfill the responsibilities that come with
21 such funding, as has each of the ALECA members.

22 Accordingly, to ensure a level playing field when a carrier obtains ETC status
23 and responsibilities, ALECA believes that the Commission should assert its regulatory
24 oversight over the ETC, irrespective of the technology the ETC uses to deliver universal
25 service to the rural consumers of the State. This result is not only a matter of
26 fundamental fairness among carriers, but is also required to ensure consumers are not

1 without recourse to complain and/or challenge the very basis of service an ETC is
2 properly required to offer. This result is consistent with the charge made by Congress to
3 this Commission to ensure that the designation of an additional ETC in a rural telephone
4 company service area truly is in the public interest.

5 **Q-18. For purposes of this proceeding, does the fact that ALLTEL offers service through**
6 **wireless technology justify a different treatment of ALLTEL by the Commission**
7 **with respect to service and quality standards imposed on the rural LEC ETCs,**
8 **including ALECA members?**

9 **A-18.** No, it does not. The fact that ALLTEL utilizes wireless technology to provide
10 telecommunications services to its end users does not warrant a different treatment by
11 the Commission in making factual findings and evaluating the public interest. Some
12 people may attempt to confuse this issue, but it should not be subject to any confusion.
13 It is my understanding that the state commissions have been preempted from regulating
14 entry and rates of CMRS service providers. However, this does not mean that the
15 Commission is prohibited from imposing conditions on the grant of ETC status to
16 CMRS providers that ensure that Arizona's rural consumers are protected. Obviously,
17 Congress' mandate to the Commission to consider the public interest would be
18 meaningless if the Commission could not condition ETC designation on requirements
19 that the competitive ETC provide service on a par with that provided by rural LECs.
20 The concepts of equal protection, technological neutrality, and fundamental fairness
21 demand that all ETCs be held to the same level of oversight by the Commission
22 regardless of the technology they use.

23 **Q-19. What basis do you have for your suggestion that it is necessary for the Commission**
24 **to undertake a "rigorous review" of ALLTEL's application?**

25 **A-19.** This Commission has granted ETC status to an additional carrier serving in a rural
26 telephone company service area once before in the instance of Smith-Bagley. The

1 Commission determined that the Smith-Bagley application should be granted on the
2 basis of very specific facts and circumstances. On its face, the ALLTEL application
3 does not demonstrate any specific facts that warrant a grant of ETC status. In the
4 absence of a thorough review and necessary findings, the public interest will not be
5 served. In fact, ALECA believes that the public interest will be harmed by designation
6 of multiple ETCs in rural markets. The provision of funds intended for universal
7 service network cost recovery in small rural markets will inevitably lead to instability
8 and discourage investment in the rural areas. VTC exists because so-called "market
9 forces" do not exist. In the absence of the universal service program, it is questionable
10 whether the rural areas of Arizona could provide a customer base to sustain one
11 universal service provider much less multiple carriers. The potential detriment to the
12 public will become even greater if the FCC chooses to cap the USF available to an area
13 and divide it among multiple ETCs. In the absence of a portion of the cost recovery
14 revenues provided by the USF, VTC and other ALECA members could be forced to cut
15 back on the services they provide and the ongoing investment in infrastructure. The
16 responses of ALLTEL to ALECA's data requests demonstrate that substantial questions
17 of fact exist with respect to: (1) whether ALLTEL truly provides or offers to provide
18 universal service; (2) whether ALLTEL will subject itself to the Commission's
19 jurisdiction so as to allow the Commission to ensure that ALLTEL complies with the
20 universal service requirements; and (3) whether ALLTEL will comply with its
21 obligations regarding the use of federal USF disbursements. Based on its skeletal
22 application and the minimal information provided to data responses, ALLTEL
23 apparently would have the Commission "rubber stamp" its request. Obviously, this is
24 not a result that serves the public interest.

25 **Q-20. Can you provide specifics to support your position that ALLTEL's services should**
26 **not be considered "universal service" in rural areas of Arizona?**

1 A-20. Absolutely. ALLTEL does not have a universal service offering comparable to the
2 unlimited local calling plans offered by the ALECA member companies. ALECA
3 member companies offer their universal service package based on unlimited local
4 calling and with toll presubscription. (which ALLTEL does not offer (see Response to
5 ALECA Data Request No. 7)). The fundamental issue for the Commission to consider
6 is whether any service offered by ALLTEL constitutes universal service in Arizona.
7 Specifically, the Commission should consider the following questions:

- 8 • Will ALLTEL provide a service that is consistent with Section 254 of the Act?
- 9 • Will ALLTEL offer unlimited local service without additional usage charges?
- 10 • Can an ALLTEL customer elect to block calls (toll limitation) outside of the
11 local area to ensure that he or she does not incur additional usage charges?
- 12 • Can the customer dial universally recognized dialing patterns (*e.g.*, 101xxxx) to
13 reach the services of alternative carriers of choice?
- 14 • Can the ALLTEL customer reach operator services to place calls alternatively
15 charged (*e.g.*, collect)?
- 16 • Can the ALLTEL customer place 1-800 and other "toll-free" calls on an
17 unlimited basis at any time without incurring additional usage charges?

18 On the basis of the record before the Commission, the answer to each of these questions
19 appears to be no. I respectfully suggest that if the answer to only one of these questions
20 is "no," then ALLTEL does not provide a level of service that this Commission and
21 rural Arizona customers expect from a universal service provider.

22 **Q-21. Is it permissible for the Commission to require ALLTEL or any universal service**
23 **provider to offer unlimited local exchange service on a flat rate basis within a**
24 **service area as a condition to ETC designation?**

25 A-21. Yes. That is precisely what the Commission requires of ALECA members. The FCC
26 has not prevented the Commission from acting to ensure that additional ETCs provide

1 universal service that meets the Commission's criteria and public interest standard. The
2 fact that the Commission may be precluded from "rate regulating" a CMRS provider
3 does not lead to a requirement that the Commission grant a CMRS carrier ETC status
4 irrespective of a determination that the service offerings and rates of the CMRS carrier
5 are consistent with universal service. If that were the case, how could the Commission
6 fulfill its duty under Section 214 of the Act to protect the public interest when
7 designating additional ETCs in rural telephone company service areas?

8 The minimum service requirements established by the FCC regarding universal
9 service require only that some amount of local usage to be included in the monthly
10 charge. The FCC has not, however, established the amount of local usage that is
11 required. Similarly, although the FCC has not required an ETC to provide equal access
12 and toll presubscription, it has not limited the right of a state commission to do so.

13 **Q-22. With respect to whether ALLTEL actually offers "universal service," can you**
14 **provide any additional factual issues that must be resolved in order to warrant a**
15 **grant of ALLTEL's application?**

16 **A-22.** There are many factual issues that must be addressed to determine whether ALLTEL is
17 in a position to offer universal service to rural Arizona consumers. The consideration of
18 these issues was the very focus of the informational and discovery requests that ALECA
19 submitted to ALLTEL:

20 1. **Interconnection Arrangements.** ALECA asked ALLTEL to identify the
21 arrangements it has established to exchange local traffic with the rural telephone
22 companies. It should be self evident that the ability to offer service also requires the
23 ability to terminate service. A universal service provider should certainly establish
24 lawful terms and conditions to interconnect its traffic under the framework established
25 by the Act. ALLTEL, however, has not established any such arrangements with the
26 rural telephone companies in Arizona. The telecommunications industry has been

1 tainted by recent national reports about the schemes of MCI/WorldCom and other
2 carriers related to the routing of traffic in a manner intended to improperly avoid
3 interconnection. The absence of interconnection arrangements by ALLTEL with the
4 rural telephone companies is relevant in this regard. Prior to any grant of ETC status to
5 ALLTEL, ALECA urges the Commission to scrutinize the applicant and determine
6 whether ALLTEL is lawfully terminating traffic to rural telephone companies in order
7 to ensure that there is no improper routing through EAS trunks and interexchange trunks
8 in a manner that avoids the payment of proper termination charges.

9 **2. Universal Service throughout a rural telephone company service area.** It is, at a
10 minimum, unclear whether ALLTEL has any plans to offer service in the entire service
11 area of each of the ALECA member companies where ALLTEL seeks ETC designation.
12 It is unquestionable that you can move away from the highways in these rural areas and
13 find it difficult if not impossible to pick up ALLTEL's service where consumers live in
14 rural Arizona. What plans has ALLTEL provided to provide universal coverage
15 throughout the incumbent LEC's service area?

16 **3. Quality of service.** Prior to designating ALLTEL an ETC, I urge the Commission to
17 consider the actual quality of service in the same way that the Commission is concerned
18 about the quality of service offered by the rural telephone companies serving rural
19 Arizona. What are the ALLTEL call completion and call drop ratios? In fact, it is
20 questionable whether an ALLTEL customer actually has a dedicated path for its
21 communications as required by the FCC's rules. In addition, it does not appear that
22 ALLTEL provides access to operator services in a manner that results in the same level
23 of service rural Arizona customers expect today when they access an operator for
24 service.

25 **4. Use of USF funds.** Prior to designating ALLTEL as an additional ETC in any rural
26 telephone company service area, ALECA asks the Commission to ensure that the public

1 interest is truly fostered and protected. ALECA asked ALLTEL to provide information
2 regarding its capital investment plans in order to establish whether ALLTEL has
3 specific plans to provide universal service in rural Arizona. There is no question that
4 every dollar of USF received by an ALECA member represents a dollar of real cost
5 recovery related to the provision of universal service in Arizona. Prior to any additional
6 grants of ETC status in rural service areas, ALECA believes the public interest demands
7 assurance that any USF dollars directed to ALLTEL will be used in Arizona to provide
8 universal service, and not sent to Little Rock to fund some other service in some other
9 areas or to distribute to shareholders as dividends.

10 **Q-23. Isn't ALLTEL's commitment to competition, as reflected in its application,**
11 **sufficient to warrant its designation as an ETC?**

12 **A-23.** No. Essentially, ALLTEL claims that its designation as an ETC is in the public interest
13 simply because it provides "competition." If competition in and of itself was the
14 national goal, then ALLTEL's claim might have some merit. However, the nation's
15 telecommunications policy focuses first and foremost on the provision of universal
16 service. While the introduction of competition in many market areas may be beneficial
17 because the demography and topography of these areas make competition effective,
18 thereby attracting basic and advanced telecommunications services, Congress realized
19 that the market areas served by rural telephone companies are not so robust. In the non-
20 rural telephone company service areas, the Act essentially assumes the designation of
21 multiple ETCs. However, in the rural telephone company service areas, Congress
22 recognized that the designation of multiple ETCs might not serve the public interest. It
23 is for this reason that Congress gave the state commissions the right and obligation to
24 make a public interest determination prior to granting additional ETC status in rural
25 telephone company service areas. If competition alone was a sufficient basis to consider
26 an ETC application to be in the public interest in a rural area—as ALLTEL would have

1 the Commission believe—there would be no reason for Congress to ask the Commission
2 to make a distinct public interest finding with respect to each ETC application.
3 Congress recognized that it will not always serve the public interest to designate
4 additional ETCs in rural telephone company service areas, and left to the state
5 commissions the responsibility to determine whether a particular designation is in the
6 public interest.

7 **Q-24. Can you please summarize why the Commission should conclude that designation**
8 **of ALLTEL as an ETC in rural telephone company service areas is not consistent**
9 **with the public interest?**

10 **A-24.** ALLTEL offers no specifics with respect to the universal services it will provide if it is
11 designated an ETC. ALLTEL has not committed to provide unlimited local service in
12 the rural service areas. ALLTEL has not committed to provide ubiquitous service to
13 rural consumers, irrespective of where they reside. ALLTEL has provided no assurance
14 that rural customers using ALLTEL's service will even have service when they leave
15 the highways of the rural Arizona service areas.

16 The ALECA members submit that the minimal factual information provided by
17 ALLTEL together with the public policy concerns weighing against additional ETC
18 designations within rural service areas warrant a denial of ALLTEL's application.

19 **Q-25. You mentioned at the outset of your testimony that if ALLTEL is granted ETC**
20 **status, VTC's cellular affiliate, Valley Telecom Cellular, will seek ETC status as a**
21 **matter of competitive fairness and equal protection. Wouldn't that be contrary to**
22 **all of the principles you have presented in this testimony?**

23 **A-25.** VTC, like other ALECA members, is firmly convinced that it is poor
24 telecommunications policy to provide universal service network cost support to
25 multiple networks in rural areas where market forces do not support even one universal
26 service provider. After all, the Act speaks of providing support that is sufficient to

1 provide universal service, not sufficient to support multiple providers. At VTC, we
2 have hesitated from seeking ETC status for our cellular affiliate because we are
3 concerned that ETC designation of additional carriers in rural service areas nationwide
4 is producing an adverse impact on the overall size of the federal USF.

5 To illustrate my point, there are six wireless carriers (and one incumbent local
6 exchange carrier) in RSA 6. How many of these wireless carriers should be supported
7 by USF? If the Commission grants ETC status to one, must it grant ETC status to all?
8 If not, how does the Commission avoid discrimination in selecting one ETC-designated
9 carrier over the others? Can the USF Fund support all six carriers and the ILEC in RSA
10 6. What benefits would customers in RSA 6 receive that they do not enjoy today?
11 These are important questions that should be addressed by the Commission in
12 developing a sound policy regarding the designation of competitive ETCs.

13 The burgeoning size of the federal USF has raised industry-wide concerns
14 regarding the sustainability of the fund, including the increasing contributions required
15 to fund the federal USF. As a result of the growing fund size, the Joint Board is
16 considering limiting the federal funds available to a rural service area and requiring that
17 the limited amount be divided among all designated ETCs serving the rural area. This
18 result would, as I discussed earlier, jeopardize the operations of the rural telephone
19 companies which would be left unable to meet their expenses and continued capital
20 investment needs.

21 VTC's decision to hold off in its own ETC filing for its cellular affiliate is not
22 based solely on the concern about the growing level of the federal fund. The existing
23 rules have many flaws. Among these flaws is the fact that a competitor of a rural
24 telephone company receives universal service funds based on the incumbent carrier's
25 costs. Unfortunately, neither we nor this Commission can change those rules in this
26 proceeding. We must deal with the rules as they exist, and the Commission must

1 determine the public interest in the context of the facts before it, the existing rules, and
2 recognition of the forthcoming changes that may result from the proceedings pending
3 before the FCC and the Joint Board. On this basis, VTC joins its fellow ALECA
4 members in the conviction that the public interest does not warrant designation of
5 ALLTEL as an ETC in the service areas of any rural telephone company.

6 The public interest demands assurance that the designation of additional ETCs in
7 rural telephone company service areas will foster, and not impede, universal service.
8 The public interest also requires certainty that any funds distributed to the newly
9 designated ETC will be used to provide universal service in the rural areas of Arizona.
10 The facts before the Commission do not provide any assurance that the public interest
11 will be protected if ALLTEL is designated an ETC. If nonetheless, and irrespective of
12 these considerations, ALLTEL is granted ETC status, Valley Telecom Cellular will, as a
13 matter of competitive fairness and equal protection, also seek ETC status. I can assure
14 you that if Valley Telecom Cellular does seek ETC status, there will be no question, in
15 contrast to the facts and circumstances before the Commission in this proceeding, that
16 every universal service dollar Valley Telecom Cellular were to receive would be utilized
17 to advance the provision of service in the rural areas we serve. The advancement of
18 telecommunications services in rural service areas is, in fact, the single purpose that
19 drives the very existence of VTC and our fellow ALECA members.

20 **Q-26. Does this conclude your testimony?**

21 **A-26.** Yes, thank you.
22
23
24
25
26

Attachment A

Excerpts from Section 214 of the
Communications Act of 1934, as Amended

(e) PROVISION OF UNIVERSAL SERVICE.--

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

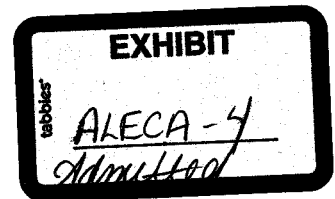
(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-- A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

...

(5) SERVICE AREA DEFINED.-- The term 'service area' means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION)
OF ALLTEL COMMUNICATIONS, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

DOCKET NO. T-03387-03-0316

DIRECT TESTIMONY OF STEVEN D. METTS

ON BEHALF OF THE

ARIZONA LOCAL EXCHANGE CARRIERS ASSOCIATION

DECEMBER 29, 2003

1 **Q-1. Please state your name and business address.**

2 A-1. My name is Steven D. Metts. My business address is 2270 La Montana Way,
3 Colorado Springs, Colorado 80918.

4 **Q-2. By whom are you employed and in what capacity?**

5 A-2. I am a Consulting Manager with GVNW Consulting, Inc. GVNW is a consulting
6 firm that specializes in rural telecommunications issues.

7 **Q-3. Please describe your business experience.**

8 A-3. I have been in the rural telecommunications industry for over 17 years, including
9 11 years with two operating telephone companies and 6 years as a consultant.
10 While I was employed by operating companies, I had overall responsibility for
11 accounting, cost separations and settlements, information services, human
12 resources, regulatory and legislative affairs, customer service, and billing. As a
13 consultant, I primarily assist clients with regulatory and legislative affairs,
14 separations and settlements, and acquisitions.

15 **Q-4. On whose behalf are you testifying in this case?**

16 A-4. I am testifying on behalf of the Arizona Local Exchange Carriers Association
17 ("ALECA") and those of its members that are participating in ALECA's
18 intervention in this case.

19 **Q-5. Please describe ALECA.**

20 A-5. ALECA is comprised of small telephone companies, including a member-owned
21 cooperative and several tribally-owned companies, all of which are providing
22 local exchange telecommunications services to customers in rural, high-cost areas
23 of Arizona. For purposes of intervention in this case, the members of ALECA
24 are: Arizona Telephone Company, CenturyTel, Copper Valley Telephone,
25 Frontier, Midvale Telephone Exchange, Navajo Communications, South Central
26 Communications, Southwestern Telephone Company, Table Top Telephone

1 Company and Valley Telephone Cooperative. In addition, Fort Mojave
2 Telephone Company, Gila River Telecommunications, San Carlos Apache
3 Telecom Utility and Tohono O'Odham Utility Authority are tribally-owned
4 companies that concur in this testimony, however are not subject to regulation by
5 the Arizona Corporation Commission.

6 **Q-6. What is the purpose of your testimony?**

7 A-6. ALLTEL Communications, Inc.'s ("ALLTEL") petition seeks to have ALLTEL
8 designated as an eligible telecommunications carrier ("ETC") for federal
9 universal service fund ("USF") support for a large area of Arizona, including
10 extensive rural high-cost areas served by members of ALECA. I will describe
11 the critical role that federal universal service funding plays in the ability of rural
12 local exchange carriers ("RLECs") to provide high quality, reasonably priced
13 telecommunications services to customers in high-cost rural areas of Arizona. I
14 will also explain why ALECA believes it would not be in the public interest for
15 the Commission to grant ALLTEL's petition insofar as it seeks ETC designation
16 in the areas served by RLECs in Arizona.

17 **Q-7. Are you aware that the Commission has previously granted ETC status to**
18 **Smith- Bagley, Inc.**

19 A-7. Yes.

20 **Q-8. Did ALECA intervene in the case that resulted in Smith-Bagley being**
21 **granted ETC status?**

22 A-8. No. However, Table Top Telephone Company, a member of ALECA, did
23 intervene in the earlier Smith-Bagley case. It is my understanding that Table Top
24 and Smith-Bagley entered into a settlement agreement in the case.

25 **Q-9. Does ALECA believe this case is different than the prior case considered by**
26 **the Commission?**

1 A-9. In certain aspects, yes.

2 **Q-10. Please Explain.**

3 A-10. Smith-Bagley's petition for ETC designation focused on providing
4 telecommunications services to unserved or under-served areas, primarily on
5 Native American lands. Smith-Bagley contended that ETC designation would
6 enable it to provide a wireless option to customers in areas where wireline
7 household penetration is low.

8 ALLTEL, on the other hand, has stated from the outset that if it is granted
9 ETC status it intends to report all of its current wireless customers, as well as
10 future customers, in its designated ETC area and claim federal USF support for
11 those customers. ALLTEL argues that customers will benefit by having a choice
12 of providers, even though it is undisputed that customers in the areas where
13 ALLTEL seeks designation already have that choice. The wireless network
14 owned by ALLTEL was built and its customers were being served well before the
15 Commission started granting ETC status to wireless carriers. ALECA is
16 concerned that ALLTEL is attempting to increase value to its shareholders
17 through its proposed ETC designation rather than provide new or improved
18 service for customers in rural areas. ALECA is also concerned because, if
19 ALLTEL is designated an ETC in the rural areas it requests, it will be the third
20 ETC in some of those areas. ALECA believes that continued approval by this
21 Commission of multiple competitive ETCs in high-cost rural areas eventually
22 will result in severe financial hardship for rural telephone customers. For these
23 reasons, and the other reasons discussed in my testimony, ALECA opposes
24 ALLTEL's petition for ETC designation in areas served by rural telephone
25 companies as being contrary to the public interest.

26 **Q-11. Why do you believe ALLTEL is attempting to increase shareholder value**

1 **with this application rather than to expand or provide service in rural areas?**

2 A-11. ALECA believes this is the case because for several reasons. First, ALLTEL is
3 very vague in its application, testimony, and responses to data requests in this
4 proceeding. Although ALLTEL asserts that it needs funding to expand its service
5 into rural areas, it provides no detail regarding any specific construction plans,
6 construction timelines, or projected customers in rural areas. When asked to
7 identify construction projects planned for 2004, 2005, and 2006, ALLTEL's
8 response was that the company has not finalized construction plans for any of the
9 years requested (ALLTEL Response 1-12 to ALECA's First Set of Data
10 Requests). When asked to provide a projection of new local customers that
11 ALLTEL expects to add in the rural portion of its requested ETC area for the
12 years 2004 through 2008, ALLTEL responded that it has not projected the
13 number of new customers in rural areas for these years (ALLTEL Response 1-14
14 to ALECA's First Set of Data Requests). It is clear from these responses that
15 ALLTEL has not developed, or is not willing to provide, even a basic business
16 plan for serving rural areas, and yet is requesting the Commission to make a
17 determination that granting ETC status and ultimately universal service funding
18 in the rural areas is in the public interest.

19 In response to a line of questioning in the Staff's First Set of Data
20 Requests regarding lifeline service, ALLTEL is equally vague. In response to
21 Staff's question MK 1-8, ALLTEL states that it has not finalized a lifeline
22 program. In response to Staff's question MK 1-18, ALLTEL states that it has not
23 yet determined a process it will employ to determine a customer's eligibility for
24 lifeline service, or to determine whether a customer requesting lifeline service is
25 already receiving lifeline service from the ILEC.

26 Based on ALLTEL's responses, it appears that the only item that

1 ALLTEL has established or finalized with regard to providing universal is to
2 express their desire to receive funding.

3 Furthermore, ALLTEL is requesting funding for its existing customer
4 base and then asserts that the receipt of federal universal service funding will
5 provide the customers in rural areas with a choice of telecommunications
6 providers. Obviously, if ALLTEL is requesting funding for its existing customer
7 base, competition exists in rural areas already and this competition developed
8 without universal service funding. This is a clear indication that the reason
9 ALLTEL is requesting funding for its existing customer base—a customer base
10 that was obtained without universal service funding—is to maximize the revenue
11 that the company will receive from the universal service fund. This is very
12 similar to the strategy deployed by Western Wireless in several other states.

13 **Q-12. What relevance does Western Wireless have to this Docket?**

14 A-12. Western Wireless has been a leader in the wireless industry in obtaining ETC
15 status and federal universal service funding. In many states, Western Wireless
16 requested ETC status stating that it was going to provide a “universal service”
17 offering using a fixed wireless phone that was going to be a replacement for
18 wireline telephone service. After being granted ETC status, Western Wireless
19 began reporting all traditional mobile phones to the Universal Service
20 Administrative Company ("USAC") for the purpose of receiving universal
21 service funding which is exactly what ALLTEL is proposing to do in Arizona.
22 The lines that are currently being reported by Western Wireless are, at least in
23 large part, customers that had their service well before ETC status was granted.
24 The apparent end result of this is that the current federal USF support being
25 received by Western Wireless has done more to improve the bottom line of
26 Western Wireless than it has to improve telecommunications services in rural

1 areas. This is illustrated by the following statement taken from the 10K form (at
2 page 5) included in the 2002 Annual Report of Western Wireless:

3 “Initially on September 30, 2002, and again on December 31,
4 2002, we submitted our requests to receive funding for certain of
5 our traditional mobile services customers that reside in areas in
6 which we are eligible to receive federal universal service funding.
7 We expect to submit similar requests on a quarterly basis
8 throughout 2003 and believe it is likely that in 2003 we will
9 receive most, if not all, of the requested funding. Depending on
10 the amounts received, such funding could have a significant
11 beneficial impact on our 2003 subscriber revenues, ARPU
12 and cash flow.” (Emphasis added.)

13 This point is further illustrated by the following statement made by Western
14 Wireless in the 10K report filed with the Securities and Exchange Commission
15 for the second quarter of 2003:

16 “The increase in subscriber revenues for the three and six month
17 periods ended June 30, 2003, compared to the same periods one
18 year ago, was partly due to an increase in average revenue per unit
19 (“ARPU” defined as subscriber revenues divided by average
20 subscribers) and due partly to growth in subscribers. ARPU was
21 \$47.37 for the three months ended June 30, 2003, a \$3.78, or 8.7%,
increase from \$43.59 for the three months ended June 30, 2002.
ARPU was \$46.14 for the six months ended June 30, 2003, a
\$3.77, or 8.9%, increase from \$42.37 for the six months ended
June 30, 2002. The increase in ARPU was due to many factors
including the receipt of federal universal service fund
payments as an Eligible Telecommunications Carrier for
certain of our traditional mobile service customers which
contributed \$1.88 and \$2.00 to the increase in ARPU for the
three and six months ended June 30, 2003, respectively.”
(Emphasis added.)

22 It is clear that Western Wireless is communicating to its shareholders and
23 potential investors that obtaining federal universal service funding for traditional
24 mobile services creates shareholder value. ALECA is concerned that ALLTEL
25 has the same intentions given its lack of willingness to provide relevant
26 information regarding use of the funding it will receive if granted ETC status.

1 **Q-13. What is the Commission's role in the ETC designation process?**

2 A-13. Under Section 214(e)(2) of the Telecommunications Act of 1934, as amended by
3 the Telecommunications Act of 1996 (the "1996 Act"), a state commission must
4 designate more than one carrier as an ETC in a *non-rural area* if the carrier
5 requesting designation meets the requirements of Section 214(e)(1). However, a
6 state commission may designate more than one carrier in a *rural area only if* the
7 commission finds that (i) the designation is consistent with the public interest,
8 convenience and necessity; (ii) the carrier offers each of the services supported
9 by the universal service support mechanism as delineated in 47 C.F.R. §
10 54.101(a); and (iii) the carrier advertises the availability of those services. In
11 other words, this Commission's authority to designate ALLTEL as an ETC in
12 rural areas served by RLECs is, to a large degree, discretionary, in that such
13 designation may only occur upon a finding by the Commission that the
14 designation is consistent with the public interest, convenience and necessity.

15 The most critical role that the Commission plays in this ETC designation
16 process is its determination of whether granting ETC status to a competitive
17 carrier seeking designation in an area already served by a RLEC is in the public
18 interest. In addition, while the Commission does not have a role in determining
19 how much support each carrier receives or how the support is calculated for a
20 competitive ETC, it is responsible for annually certifying to the FCC that federal
21 USF funds received by ETCs in Arizona are being used for the proper purposes.

22 **Q-14. Does the Commission have authority to deny ALLTEL's petition?**

23 A-14. Yes, the Commission may deny ALLTEL's petition if it finds that granting ETC
24 status would not be consistent with the public interest, convenience and necessity.
25 In fact, the Utah Public Service Commission decided it was not in the public
26 interest to add a second ETC in the service territories of Utah's rural carriers in

1 its order issued July 21, 2000, in Docket No. 98-2215-01. This order was
2 subsequently upheld by the Utah Supreme Court in WWC Holding Co. v. Public
3 Service Commission of Utah, 44 P.3d 714 (2002).

4 **Q-15. If ALLTEL is granted ETC status, how will the amount of support it will**
5 **receive from the Federal USF be calculated?**

6 A-15. Under current FCC rules, a competitive ETC receives federal USF support based
7 on the incumbent carrier's costs, not its own costs. The incumbent carrier
8 receives support based on its actual embedded costs of providing the service and
9 making investments in high-cost areas. This support is based on annual or
10 quarterly cost filings prepared by the incumbent carrier to reflect expenditures
11 made in the prior year and submitted to USAC for review and determination of
12 the appropriate per line amount of support to be distributed to the incumbent.
13 There is a significant delay between the time that an incumbent carrier incurs
14 costs and when funding is actually received. For example, if an incumbent
15 carrier makes an investment in January 2004, this investment would be reported
16 to USAC in July of 2005, and the carrier would not receive any funding for this
17 investment until January 2006. At a minimum, there is one-year delay between
18 the time that a company incurs a cost and receives any reimbursement of the cost
19 from the federal fund. A competitive ETC, on the other hand, merely reports the
20 number of customers it is serving in its designated ETC area and then
21 immediately receives the same amount of support per line as the incumbent.

22 **Q-16. Does granting ETC status to a competitor provide a disincentive for an**
23 **incumbent to make additional investments?**

24 A-16. Unfortunately, it may. Under the current environment, when there is more than
25 one ETC, an incumbent that makes the decision to make more investment in
26 telecommunications infrastructure must take into consideration that the increased

1 investment will result in more cash flow to the competitive ETC. The critical
2 difference is that the incumbent will be getting the funding to recover a portion of
3 the actual cost of the investment already made, while the competitor gets the
4 money as a windfall.

5 **Q-17. Has ALLTEL sufficiently justified its assertion that designation as a**
6 **competitive ETC in areas served by RLECs is in the public interest?**

7 A-17. No, ALLTEL has not satisfied its burden in this regard. ALECA believes that, in
8 order to make the required finding that a competitive ETC designation would be
9 in the public interest, the Commission necessarily must find that granting
10 ALLTEL ETC designation in these areas would enhance universal service.
11 However, ALLTEL has not made a sufficient factual showing that would allow
12 the Commission to make such a finding.

13 ALLTEL has provided only generalized comments focused on the
14 supposed benefits of competition. For example, ALLTEL states that it will offer
15 consumers in its ETC designated area the benefit of choice. (Krajci Direct
16 Testimony at page 7.) ALECA does not dispute this, but ALLTEL has been
17 providing wireless service, with mobility, multiple rate plans, and expanded local
18 calling areas, to tens of thousands of customers in these areas for some time now.
19 ALLTEL correctly notes that the FCC has identified nine services and
20 functionalities to be supported by universal service support mechanisms. (Krajci
21 Direct Testimony at page 2.) In response to Staff's First Set of Data Requests
22 (MK1-35), ALLTEL correctly asserts that handsets are not a supported service
23 and therefore any evaluation of handset pricing in determination of public interest
24 would be inappropriate. Likewise, choice of rate plans, expanded calling areas,
25 and long distance offerings do not appear anywhere on that list of supported
26 services. Therefore, it would be totally inappropriate for ALLTEL to seek USF

1 funding to support offering these features. ALLTEL's flexible rate plans and
2 enhanced service features do not constitute an enhancement of universal service.

3 ALLTEL also states that it will use the federal high-cost support it
4 receives to operate, expand and maintain its facilities in Arizona that are integral
5 components in the provision of cellular service to rural and low population areas
6 (Krajci Direct Testimony at page 8.) However, ALLTEL provides no specifics.
7 It does not allege or demonstrate that the incumbent RLECs are providing
8 inadequate service or establish that any of its proposed rural areas of designation
9 have underserved or unserved consumers. Moreover, ALLTEL has been
10 providing cellular service for quite some time in its licensed areas in Arizona, and
11 it has made no showing that it needs federal USF support to continue to provide
12 service or improve its service in these areas today. Nor has it provided a
13 commitment to expand beyond its currently served areas or to provide any
14 services not already available. Without an enforceable commitment, there is no
15 way to ensure that ALLTEL will actually use monies from the federal USF to
16 serve rural Arizona. ALLTEL should describe with some specificity what
17 facilities it will construct, where they will be constructed, how they will be
18 financed, and the timetable for completing construction.

19 ALLTEL implies that if granted ETC status it may be able to offer a
20 universal service offering that is priced lower than the incumbent carriers.
21 (Krajci Direct Testimony at page 7.) However, this would seem to be a hollow
22 commitment, since ALLTEL offers no pricing information for its so-called
23 universal service offering.

24 ALLTEL simply has not demonstrated any enhancement of universal
25 service or other public benefit that justifies designating it as eligible to receive
26 federal USF funds in the rural areas served by RLECs in Arizona, particularly in

1 view of the probable detriment that I discuss later in my testimony.

2 **Q-18. Is increased competition sufficient by itself to justify the designation of an**
3 **additional ETC in a rural area?**

4 A-18. No. First, the introduction of a competitor into a rural environment does not
5 necessarily lead to lower costs or higher quality service for consumers. A high-
6 cost market, by definition, is still high-cost even after the introduction of
7 competition. The primary reason the incumbent RLECs are eligible to receive
8 funding from the federal USF is that they are providing service in geographic
9 areas where it is not economically feasible to serve at reasonable rates. With the
10 introduction of a competitive ETC, the only difference is that the market has to
11 support multiple entrants with limited financial resources. As I explained earlier,
12 under current rules, federal universal service support is calculated using the
13 incumbent's embedded costs averaged over the company's entire study area,
14 except in those limited circumstances when a RLEC may have disaggregated
15 some or all of its cost data by zone. This cost-averaging methodology disguises
16 the cost of serving the truly high-cost customers in RLEC study areas, which is
17 of little consequence when only one carrier serves the entire study area.
18 However, when an additional ETC enters the area, its distribution of federal
19 support is not based upon the new entrant's relative costs of providing service.
20 Thus, an additional ETC is over-compensated if it secures a low-cost customer,
21 which encourages the competitive ETC to cream skim -- in other words, to focus
22 its attention on serving the low cost customers.

23 Moreover, every new entrant in the service territory of a RLEC can
24 successfully make the claim that its presence increases competition. If increased
25 competition was deemed to constitute public interest in every instance, all new
26 entrants in rural service areas could have been lumped together with all new

1 entrants in non-rural service areas for purposes of ETC designations. In other
2 words, there would have been no need for a state commission to make a
3 determination of public interest prior to designating an additional ETC in an area
4 served by a RLEC. However, this is not what Congress envisioned. Congress
5 incorporated an explicit requirement of a public interest finding into Section
6 214(e)(2). The proposition that a new entrant means increased competition, and
7 increased competition by itself constitutes a satisfaction of the public interest test,
8 would render the public interest requirement in Section 214(e)(2) meaningless.
9 Therefore, "public interest" as used in Section 214(e)(2) must mean something
10 more than merely increased competition. ALECA believes the "public interest"
11 requirement can be satisfied only in those instances where the public benefits
12 created by supporting multiple carriers exceed the public costs created by
13 supporting multiple networks.

14 In addition, the intent of federal USF support is to enable carriers in high-
15 cost rural areas to provide the nine supported services at reasonable rates. In the
16 case of incumbent carriers, these rates are established and regulated by the
17 Commission. At the present time, residential local service rates offered by
18 incumbent carriers in Arizona are in the approximate range of \$9.25 to \$24.00 per
19 month. The FCC's rationale for allowing competitive wireless carriers access to
20 USF support is because it would be difficult for a wireless carrier to compete if
21 the incumbent has a local service rate that is subsidized. However, the
22 information provided by ALLTEL in this case indicates that it offers calling plans
23 ranging from \$29.95 to \$299.95 per month. Clearly, ALLTEL is charging much
24 higher rates than the incumbents for the supported services. If ETC designation is
25 granted as proposed, ALLTEL will be receiving a subsidy in addition to charging
26 a higher rate than the incumbents. Furthermore, the local rates offered by the

1 incumbents include unlimited local service usage compared to the limited number
2 of minutes included in the ALLTEL plans. It is difficult to find the public benefit
3 from this form of competition, let alone find a basis for providing public support
4 for such services. ALECA believes that, if ALLTEL is to be granted ETC status,
5 it should be required to develop a separate "universal service offering" that will
6 be offered at rates similar to those charged by the incumbents, and should be
7 restricted from reporting any lines other than those included in this universal
8 service offering to USAC for the purpose of receiving federal funds.

9 Finally, because wireless phones are mobile, competition from a wireless
10 ETC receiving federal USF support may actually lead to use of USF supported
11 services in low cost areas, contrary to the intent of universal services support
12 mechanisms and, ultimately, to the interest of the rural customers of RLECs.
13 Clearly, a customer can use his or her wireless service anywhere the wireless
14 signal is available. For many wireless providers, this geographic area is large and
15 includes both low cost and high-cost areas. However, the high-cost support
16 necessary to support the incumbent RLEC's network is very different between
17 low and high-cost areas. The wireless ETC receives USF support if its
18 customer's billing address is located in a high-cost area, even though the
19 customer might actually use the service primarily in a low cost area for which
20 universal service support is not necessary. To the extent the RLEC's customers
21 drop off the wireline network to rely only on wireless service, the continuing
22 network cost to the RLEC of serving the high-cost areas must be spread among
23 the remaining RLEC customers – in all likelihood at higher rates.

24 Costs and benefits must both be carefully weighed if limited state and
25 federal funding is to be managed for the optimal public benefit. The costs of
26 supporting multiple networks include both the increased funding requirements for

1 any additional ETC, and the decreased network efficiency of all carriers that
2 results when multiple carriers serve more sparsely populated areas. The public
3 interest is not served when high-cost support is provided to competitors that
4 cream skim and serve only low-cost or high-volume customers.

5 **Q-19. Do you believe that granting ETC status to ALLTEL will increase**
6 **competition?**

7 A-19. Not necessarily. I believe that most customers who desire to have a wireless
8 phone already have that option. As demonstrated in other states, allowing a
9 wireless carrier ETC status and allowing them to report their traditional wireless
10 customers has resulted in a duplication of support and ultimately higher USF
11 surcharges to all telecommunications users.

12 **Q-20. Can you offer any evidence that granting ETC status to a wireless carrier**
13 **has resulted in a duplication of support versus increased competition?**

14 A-20. Yes. Exhibit 1 attached to this testimony is an analysis that I prepared based on
15 lines reported by incumbent carriers and competitive carriers in New Mexico
16 since ETC status was granted. This analysis shows that between the 4th quarter of
17 2002 and the 4th quarter of 2003, the incumbent carriers serving areas where
18 there was a competitive ETC reporting lines lost 846 access lines. This represents
19 a total loss of .78%. At the same time, competitive ETC's showed an increase of
20 20,515 lines. I did a further analysis that shows the lines reported by individual
21 study area. This analysis shows that the study areas that had a competitive ETC
22 reporting lines showed an increase of 18.84% in one year. The largest study area
23 being served by Western Wireless (Valor Telecommunications LLC #1) showed
24 an increase of 35.68% while the incumbent lost .9%. It is clear that the lines
25 being reported by the wireless carrier are lines that are in addition to wireline
26 service rather than a substitution, therefore support is being duplicated.

1 **Q-21. Why is it crucial for the Commission to scrutinize closely the public interest**
2 **factor in considering ALLTEL's petition?**

3 A-21. History reflects the critical link between the provider of last resort's access to
4 sufficient and predictable federal USF funding and the provision of high quality
5 services in rural exchanges. In the absence of such funding, there is a real risk
6 that Arizona's rural telecommunications customers will experience dramatic rate
7 increases and will no longer benefit from further investments in the
8 telecommunications network. I point this out because the Commission's ruling
9 on ALLTEL's petition could well affect whether the incumbent carriers, the
10 providers of last resort in this State, will continue to have access to sufficient
11 federal USF support.

12 **Q-22. How would granting ETC status to ALLTEL threaten universal service in**
13 **Arizona's rural exchanges?**

14 A-22. As noted by numerous parties in the FCC's pending Federal-State Joint Board on
15 Universal Service proceeding (CC Docket No. 96-45, FCC 031-1), the
16 indiscriminate granting of ETC status to wireless carriers is causing an alarming
17 growth in the size of the federal USF. This is a view held not just by incumbent
18 RLECs, but has also been recognized and expressed by consumer groups. In the
19 Joint Board proceeding, the National Association of State Utility Consumer
20 Advocates filed Comments stating:

21 Under the current ETC designation rules, in the near future there will
22 likely be a sharp upward curve in the growth of the high-cost fund related
23 to the issues being examined here. A substantial portion of this growth is
24 a result of additional funds needed to support multiple lines per customer
and to support lines provided by new competitive eligible
telecommunications carriers ("CETCs"), mostly wireless ETCs.

25 * * * * *

1 Thus, under the current rules that provide support for all lines in high-cost
2 areas, a substantial portion of the growth of the high-cost fund will be
3 attributable to the support of additional lines provided by wireless
4 carriers.

5 * * * * *

6 The current and anticipated rate of growth in fund requirements needed to
7 support additional lines suggests that the current support mechanisms will
8 be strained unless the Commission makes substantial changes to the ETC
9 designation rules. (Emphasis added.)

10 There can be no doubt that growth in the federal fund necessitated by multiple
11 wireless ETC designations ultimately will jeopardize the sustainability of the
12 fund for all providers, including the incumbent providers of last resort.

13 **Q-23. What evidence do you have regarding the extent to which designation of**
14 **multiple ETCs is causing the size of the federal USF to increase?**

15 A-23. Upon review of data available on the USAC's website,
16 [www.universalservice.org/ overview/filings](http://www.universalservice.org/overview/filings), I found the following: In the
17 Fourth Quarter of 2001, competitive ETCs drew approximately \$2.7 million per
18 quarter from the federal USF. By the Fourth Quarter of 2002 that amount had
19 grown to over \$41 million per quarter and as of the Fourth Quarter of 2003 the
20 amount drawn by competitive ETCs had grown to in excess of \$62 million per
21 quarter. As recently as the First quarter of 1999, the contribution percentage
22 assessed to carriers which then pass the charge on to their customers, was
23 approximately 3.2%. By the end of 2001, that percentage had increased to 6.9%,
24 by the end of 2002 it was up to 7.3%, and it currently is approximately 8.7%.

25 As more competitive ETCs are designated by state commissions, the
26 demand on the federal USF and the corresponding assessment to carriers and
their customers will continue to escalate.

Q-24. What is it about ALLTEL's ETC petition in this case that heightens this

1 **concern about growth in demands on the federal USF fund?**

2 A-24. ALECA is concerned that each additional ETC designation puts more and more
3 pressure on the limited resources of the federal USF and therefore jeopardizes the
4 sustainability of the fund and the support flowing to providers of last resort. If
5 ALLTEL's petition is granted, it would become the third ETC in some high-cost
6 areas of Arizona. ALECA believes the downside risk evolving from the
7 designation of multiple competitive ETCs in rural areas (*i.e.* impairment of the
8 ability of providers of last resort to provide basic service) is becoming
9 dangerously high. Consequently, ALECA believes that all state commissions,
10 including this Commission, must be particularly diligent in their review and
11 scrutiny of requests for ETC designation in areas served by RLECs so that quality
12 telephone services at reasonable rates can continue to be available for customers
13 in remote high-cost rural areas of the state.

14 **Q-25. Would granting ETC status to ALLTEL have an impact on**
15 **telecommunications carriers other than incumbent LECs?**

16 A-25. Yes, it would affect other carriers in at least two ways. First, under the current
17 rules, granting ETC status to ALLTEL would increase the demand on the federal
18 USF and therefore result in higher surcharges to all providers of interstate
19 services which in turn results in higher surcharges to end user customers. This
20 situation applies to interexchange carriers as well as wireless providers.

21 Second, granting ETC status to one wireless provider places other
22 wireless providers at a competitive disadvantage. There are at least two wireless
23 providers in each wireless service area. If one wireless provider is granted ETC
24 status and is receiving federal USF payments, it has an advantage over the
25 competing wireless carrier that is not. It is an advantage because the wireless
26 ETC is receiving payments from the federal USF that are not based on costs. In

1 effect, the funds are increased cash flow that can be used to reduce rates or
2 provide other packages and thereby compete more effectively than the other
3 wireless providers. As I mentioned earlier, Western Wireless has reported in its
4 annual report that it has been able to increase its ARPU by \$2.00 per customer
5 per month solely through USF payments. When taking into consideration that
6 the ARPU is an average number over the entire Western Wireless customer base,
7 including the non-rural areas for which it receives little or no USF support, it has
8 a significant financial advantage over other wireless providers who do not have
9 ETC status. This phenomenon is evidenced by the recent upsurge in ETC
10 applications in several states. Wireless providers cannot afford to allow their
11 competitors to receive this funding and gain the competitive advantage, a point
12 that is raised in this docket in the direct testimony of Judy Bruns. Thus, they are
13 seeking ETC designation so they also can obtain the federal USF funds. As a
14 result, the cycle continues and the time of the inevitable impact on rural
15 customers grows nearer.

16 **Q-26. Have you read the Staff Report in this Docket?**

17 A-26. Yes

18 **Q-27. Do you agree with the Staff's recommendation?**

19 A-27. I respectfully disagree with Staff's recommendation that the Commission find
20 that granting ALLTEL ETC status in areas served by rural carriers is in the public
21 interest. The basis for Staff's recommendation is that rural customers will have a
22 choice of telecommunications providers. However, it does not appear that Staff
23 or ALLTEL have presented any evidence that would show that customers do not
24 already have that choice. Furthermore, I believe that the public interest analysis
25 should consider several other factors other than consumer choice.

26 **Q-28. What public interest factors should the Commission consider in determining**

1 **whether to designate ALLTEL as an ETC in the rural areas served by**
2 **RLECs?**

3 A-28. ALECA believes that the Commission should consider at least the following
4 issues:

5 (1) Whether the service area in question is being adequately served by the
6 incumbent carrier;

7 (2) Whether customers in rural areas already have the ability to get service
8 from a wireless carrier if they choose to do so;

9 (3) Whether the introduction of ALLTEL as an additional ETC will enhance
10 universal service in the designated area;

11 (4) Whether providing additional funding to ALLTEL, which is already
12 providing wireless service to customers in the proposed areas of designation, will
13 benefit consumers in view of the fact that granting ETC status will result in
14 higher USF surcharges to all telecommunications customers in the state;

15 (5) Whether ALLTEL has demonstrated a commitment to provide service to
16 all customers throughout the areas for which it is seeking ETC status and whether
17 a customer requesting service from ALLTEL will receive such service in a
18 reasonable timeframe;

19 (6) Whether ALLTEL is qualified to provide high quality and reasonably
20 priced telecommunications services throughout its designated ETC service area if
21 the incumbent LEC were to withdraw its ETC status following ALLTEL's ETC
22 designation.

23 (7) Whether it is in the public interest for customers in low cost exchanges to
24 pay surcharges to help support wireless service in high-cost rural areas, in
25 addition to supporting the current wireline service.

26 **Q-29. Are there other areas in the Staff Report that cause concern?**

1 A-29. Yes. The recommendation for approval of the redefinition of the study areas of
2 Arizona Telephone Company, CenturyTel, Frontier, Midvale Telephone
3 Exchange, Navajo Communications, South Central Communications, and Table
4 Top Telephone Company causes concern. Staff correctly states that the
5 Commission must consider the administrative burden a rural ILEC could face as
6 a result of the proposed service area designation. The Staff bases its
7 recommendation in part on ALLTEL's assertion that redefining the study area
8 will have no impact on the way the ILECs calculate their costs. Staff further
9 states that the ILEC has the opportunity to disaggregate their study areas to
10 determine costs at less than a study area level so that support would be distributed
11 in a manner that more closely aligns the per-line support with the cost of
12 providing the service. Disaggregation allows an ILEC to receive more support in
13 higher cost areas and less support in lower cost areas which theoretically
14 eliminates the incentive for a competitor to engage in cream-skimming.

15 While disaggregating is a potential option for an ILEC, it is a substantial
16 burden. While ILECs generally track investment on a wire center basis, expenses
17 are kept on a study area basis. Furthermore, virtually all costing for small ILECs
18 is calculated using fully embedded and fully distributed costing. If an ILEC
19 chooses to disaggregate, it is generally done through the use of a forward looking
20 cost model. Therefore, disaggregating requires a total change in the way that
21 costs are calculated for an ILEC. Most rural ILECs would have to employ the
22 services of a consultant to prepare a disaggregation study and in addition to the
23 costs of the study, would incur the legal and regulatory expenses involved with
24 getting the study approved by the Commission. This causes small companies to
25 incur a substantial administrative burden and expense for a small company with
26 little or no benefit to its rate payers.

1 Furthermore, ALECA does not believe that disaggregating eliminates any
2 concern over cream-skimming. Disaggregating shifts costs away from higher
3 density areas and assigns more costs to lower populated areas. Although
4 disaggregating would result in the competitor receiving less support in the higher
5 density areas than it would in lower density areas, there is no reason to believe
6 that the higher support in lower density areas will be enough to ensure that the
7 competitor serves the entire area, which is the ultimate goal of the universal
8 service fund.

9 **Q-30. Is there another way to address this issue?**

10 A-30. Yes. Other than denying ALLTEL's application in the areas where the company
11 cannot serve the entire study area, one possible way to address this issue would
12 be to require ALLTEL to provide service throughout the study areas of the rural
13 carriers by leasing spectrum from the license holder in the areas where it
14 currently does not hold a license or through resale of another carrier's service.
15 Every RSA and MSA has at least two license holders. This would ensure that
16 service is provided throughout the study area as intended in the 96 Telecom Act
17 and places the burden on the beneficiary of the support, ALLTEL, rather than the
18 incumbent. Another way would be to simply deny ALLTEL's application in the
19 areas where it cannot serve the entire study area.

20 **Q-31. What are the implications of granting ETC status to ALLTEL in**
21 **relationship to the current regulatory scheme imposed on the ILECs?**

22 A-31. The current regulatory scheme imposed on the ILECs is based on the assumption
23 that the ILECs are monopoly providers of service and that regulation of the
24 services and prices of the ILEC offerings are necessary to protect the public
25 because of the lack of competition. When ETC status is granted to a competitive
26 carrier such as ALLTEL, the Commission is essentially determining that there is

1 more than one provider in the designated areas that is fully capable and willing to
2 provide basic telecommunications services throughout these areas and that will
3 be publicly supported in doing so. Once this occurs, the rationale for imposing
4 regulation on the ILECs is no longer valid and the whole purpose of regulation of
5 the ILEC by the Commission is subject to question. If regulation is to continue,
6 the incumbent should be regulated on the same basis as the competitor. This
7 could occur in one of three ways. Regulation of the ILEC could be relaxed or
8 eliminated; the wireless entrant could be regulated to the same extent the ILEC is
9 currently, or some middle ground of lessened regulation could be applied to both.
10 While this case is not the appropriate forum to address all of those issues, the
11 Commission should be aware that its decision in this case raises those types of
12 fundamental questions which may need to be addressed should it decide to grant
13 ETC status to ALLTEL.

14 **Q-32. Does ALECA believe the benefits of designating ALLTEL an ETC in the**
15 **rural areas it proposes outweigh the costs?**

16 A-32. No. To the contrary, ALECA believes:

17 (1) That ALLTEL has failed to demonstrate that granting it ETC designation
18 in the rural areas it proposes will enhance universal service or otherwise provide
19 additional benefit to consumers in those areas or that ALLTEL needs the federal
20 USF in these areas where it has provided wireless services to customers for some
21 time;

22 (2) That ALLTEL has failed to demonstrate with sufficient specificity that it
23 is committed to extend its network beyond the areas that it already serves;

24 (3) That ALLTEL would use the federal USF support to serve predominately
25 low cost customers in relatively densely populated areas, even though the support
26 it seeks is intended to cover the cost of serving customers in remote, sparsely

1 populated areas; and

2 (4) That ALLTEL would not be providing service throughout the "ETC
3 service area" and thus would be engaged in cream skimming;

4 **Q-33. What is the Federal-State Joint Board on Universal Service and what is the
5 current status of its work on USF issues?**

6 A-33. Issues relating to universal service have been referred by the FCC to the Federal-
7 State Joint Board on Universal Service in connection with the FCC's
8 longstanding docket considering universal service issues. CC Docket No. 96-45.
9 The Federal-State Joint Board on Universal Service is made up of commissioners
10 from the FCC and state commissions. It considers universal service matters and
11 makes recommendations to the FCC.

12 A number of critical universal service issues are under consideration by
13 the Federal-State Joint Board at this time including possible amendments to FCC
14 rules on universal service, including but not limited to the rules governing ETC
15 designations.

16 While a specific date for a decision from the Federal-State Joint Board
17 has not been announced, ALECA believes the Joint Board will issued
18 recommendations in January 2004 and that its recommendations are likely to
19 impact the manner in which state commissions are to conduct their ETC
20 designation proceedings. In a prepared statement made on October 30, 2003,
21 before the United States Senate Committee on Commerce Science and
22 Transportation, FCC Chairman Powell stated:

23 When it has finished considering the record, the Joint Board will make its
24 recommended decision to the FCC, which we anticipate receiving in early
January 2004. I look forward to reviewing it then.

25 **Q-34. What is ALECA's recommendation to the Commission in this case?**
26

1 A-34. ALECA submits that ALLTEL has failed to demonstrate that ETC designation in
2 the proposed rural areas served by RLECs will result in enhancement of universal
3 service or sufficient benefits to the public, and that a balancing of the public
4 interest factors supports denial of ALLTEL's petition as it pertains to the rural
5 areas served by RLECs.

6 **Q-35. Do you have any concluding remarks?**

7 A-35. Arizona relies heavily on the ability of the rural telecommunications carriers to
8 recover a portion of the cost of providing service in rural areas of Arizona from
9 the existing federal USF mechanisms. This Commission should give serious
10 consideration to the question of whether it is in the public interest to permit
11 subsidization of competition in sparsely populated rural areas of Arizona. The
12 dynamics of distance and density that make rural areas costly to serve do not
13 decrease as a result of the introduction of competition; they actually increase for
14 all market participants. The current federal USF mechanisms will not endure
15 indiscriminant and unrestricted demand on the USF funding base. The
16 unrestricted approvals by state commissions of ETC petitions in rural high-cost
17 areas perpetuates unsustainable incentives for the new entrant, in this case
18 ALLTEL, and disincentives for the incumbent. Over time, this prescription will
19 result in poor and/or inadequate service at higher cost rather than technological
20 innovation and efficiencies. Such a potentially unwelcome outcome was
21 envisioned in the 1996 Telecommunications Act and protections against such an
22 outcome were built in through its exemptions for rural providers and its mandate
23 to the states to protect the public interest. ALLTEL's petition for ETC
24 designation in areas served by RLECs is clearly not in the public interest and
25 should be denied.

26 **Q-36. Does this conclude your direct testimony?**

1 A-36. Yes it does. I may offer additional testimony at the hearing in this case, after
2 having the opportunity to review any further testimony submitted by other
3 parties.

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EXHIBIT 1

Arizona Local Exchange Carriers Association
Exhibit 1 to the Testimony of Steven D. Metts
Analysis of Lines Reported to USAC for New Mexico

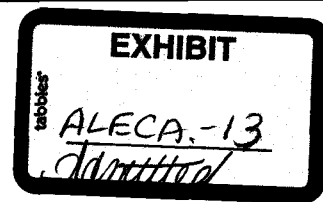
Study Area Name	3rd Quarter 2002 (1)	4th Quarter 2002 (2)	1st Quarter 2003 (3)	2nd Quarter 2003 (4)	3rd Quarter 2003 (5)	4th Quarter 2003 (6)	Annual Gain (Loss) (6) - (2)	Percentage Change
Valor Telecommunications LLC #1	47,882	47,882	47,453	47,453	47,453	47,453	-429	-0.90%
Valor Telecommunications LLC #2	49,384	49,384	48,995	48,995	48,995	48,995	-389	-0.79%
Dell Telephone Cooperative	472	472	478	478	478	478	6	1.27%
Leaco Telephone Cooperative	2,446	2,446	2,348	2,348	2,371	2,371	-75	-3.07%
Tularosa Basin Telephone Company	5,150	5,150	5,194	5,194	5,194	5,194	44	0.85%
Penasco Valley Telephone Cooperative	3,538	3,538	3,448	3,448	3,535	3,535	-3	-0.08%
Total Incumbent Reported Lines	108,872	108,872	107,916	107,916	108,026	108,026	-846	-0.78%
Western Wireless	0	0	19,645	20,683	21,008	21,008	21,008	
Leaco Telephone Cooperative (CLEC)	0	0			353	353	353	
Total CETC Reported Lines	0	0	19,645	20,683	21,361	21,361	21,361	
Total Reported Lines	108,872	108,872	127,561	128,599	129,387	129,387	20,515	

CETC Lines Reported By Study Area - New Mexico

	4th Quarter 2003				4Q 2002	
	Incumbent Lines	Western Wireless	Leaco CLEC	Study Area Total	Study Area Total	Percent Change
Valor Telecommunications LLC #1	47,453	17,158	353	64,964	47,882	35.68%
Valor Telecommunications LLC #2	48,995	2,425		51,420	49,384	4.12%
Dell Telephone Cooperative	478	4		482	472	2.12%
Leaco Telephone Cooperative	2,371	599		2,970	2,446	21.42%
Tularosa Basin Telephone Company	5,194	490		5,684	5,150	10.37%
Penasco Valley Telephone Cooperative	3,535	332		3,867	3,538	9.30%
Totals	108,026	21,008	353	129,387	108,872	18.84%

Data Source: <http://www.universalservice.org/overview/filings/>

ALLTEL COMMUNICATIONS, INC.'S
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO T-03887A-03-0316



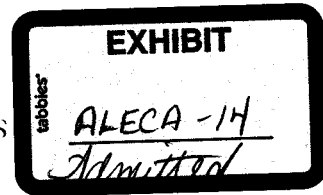
AUGUST 14, 2003

MK 1-10: How do the prices of the Company's offerings compare with the price of wireline offerings for the ILECs in whose territory the Company is requesting ETC designation?

Response: ALLTEL believes that its prices are competitive with those of the wireline providers in the areas in which the Company is requesting ETC designation.

Response provided by: Lawrence Krajci, ALLTEL

ALLTEL COMMUNICATIONS, INC.'S
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO T-03887A-03-0316



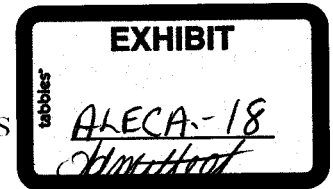
AUGUST 14, 2003

MK 1-19: Should the Company be designated an ETC, describe with specificity how the Company would augment its network to improve service levels and offerings in rural areas.

Response: As noted above, the Company has not finalized its capital expenditure plans for 2004. Any federal USF funds received will be utilized in accordance with federal requirements to support the nine services established by the FCC as core services to be offered by an ETC. ALLTEL strives to continue to improve and expand service. The addition of federal support will enhance ALLTEL's ability to improve and expand service.

Response provided by: Lawrence Krajci, ALLTEL

ALLTEL COMMUNICATIONS, INC.'S
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO T-03887A-03-0316



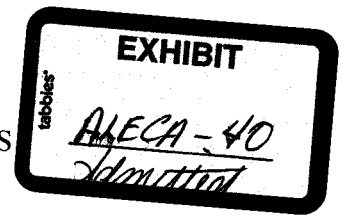
AUGUST 14, 2003

MK 1-31: Should the Company be granted ETC status for the requested area, does the Company believe it has carrier of last resort obligations to customers who reside outside an ILEC service territory but within the ETC area? Please explain your response.

Response: As stated in its application, ALLTEL will seek to provide service to any customer within the designated ETC area.

Response provided by: Lawrence Krajci, ALLTEL

ALLTEL COMMUNICATIONS, INC.'S
RESPONSES TO ARIZONA LOCAL EXCHANGE CARRIERS
ASSOCIATION FIRST SET OF DATA REQUESTS
DOCKET NO. T-03887A-03-0316



DECEMBER 2, 2003

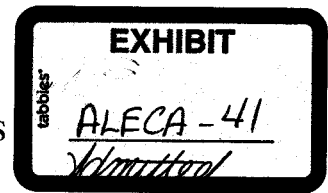
1-20: Does ALLTEL have plans to install yagi antennae at residences of customers within the areas for which ALLTEL is seeking ETC status? If yes, please answer the following questions:

- (a) Please describe the capabilities of the yagi antennae that ALLTEL intends to install.
- (b) What is the cost to deploy each yagi antenna?
- (c) How long does it take to deploy a yagi antenna from the time a customer orders a yagi antenna?
- (d) Will a yagi antenna be made available to every ALLTEL customer in Arizona requesting a yagi antenna?
- (e) Will ALLTEL's local customers be charged for a yagi antenna, and if so, what will be the cost?

RESPONSE No.

Response Provided by Lawrence J. Krajci

ALLTEL COMMUNICATIONS, INC.'S
RESPONSES TO ARIZONA LOCAL EXCHANGE CARRIERS
ASSOCIATION FIRST SET OF DATA REQUESTS
DOCKET NO. T-03887A-03-0316

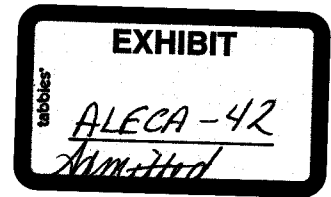


DECEMBER 2, 2003

- 1-21: Does ALLTEL have plans to provide 3-watt wireless telephones to customers in Arizona? If yes, please answer the following questions:
- (a) Will a 3-watt wireless telephone be made available to any ALLTEL customer requesting a 3-watt wireless telephone?
 - (b) What will a customer be charged for a 3-watt wireless telephone?

RESPONSE ALLTEL has no current or specific plans to provide 3-watt wireless telephones.

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Virginia Cellular, LLC)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the Commonwealth of Virginia)	

MEMORANDUM OPINION AND ORDER

Adopted: December 31, 2003

Released: January 22, 2004

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, and Adelstein issuing separate statements; Commissioner Martin dissenting and issuing a separate statement.

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APPENDIX A -- VIRGINIA NON-RURAL WIRE CENTERS FOR INCLUSION IN VIRGINIA CELLULAR'S ETC SERVICE AREA

APPENDIX B -- VIRGINIA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN VIRGINIA CELLULAR'S ETC SERVICE AREA

APPENDIX C -- VIRGINIA RURAL TELEPHONE COMPANY WIRE CENTERS FOR INCLUSION IN VIRGINIA CELLULAR'S ETC SERVICE AREA

I. INTRODUCTION

1. In this Order, we grant in part and deny in part, subject to enumerated conditions, the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Virginia Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. We find that the designation of Virginia Cellular as an ETC in two non-rural study areas serves the public interest.³ We also find that the designation of Virginia Cellular as an ETC in areas served by five of the six rural telephone companies serves the public interest and furthers the goals of universal service. As explained below, with regard to the study area of NTELOS, we do not find that ETC designation would be in the public interest.

2. Because Virginia Cellular is licensed to serve only part of the study area of three of six incumbent rural telephone companies affected by this designation, Virginia Cellular has requested that the Commission redefine the service area of each of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act.⁴ We agree to the service area redefinition proposed by Virginia Cellular for the service areas of Shenandoah and MGW, subject to the agreement of the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements.⁵ We find that the Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved.⁶

¹ Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, filed April 26, 2002 (Virginia Cellular Petition).

² 47 U.S.C. § 214(e)(1).

³ Virginia Cellular requests ETC designation in the study areas of the following non-rural telephone companies: Bell Atlantic and GTE South, Inc. (GTE). Virginia Cellular requests ETC designation in the study areas of the following rural telephone companies: Shenandoah Telephone Company (Shenandoah), NTELOS Telephone Inc. (NTELOS, formerly Clifton Forge-Waynesboro Telephone Company), MGW Telephone Company (MGW, formerly Mountain Grove-Williamsville Telephone Company), New Hope Telephone Company (New Hope), North River Telephone Cooperative (North River), and Highland Telephone Cooperative (Highland). We note that although the Virginia Cellular Petition requested ETC designation for the study area served by Central Telephone Company of Virginia, Virginia Cellular subsequently withdrew its request for ETC designation in Central Telephone's study area. See Supplement to Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, filed April 17, 2003 at 1 (Virginia Cellular April 17, 2003 Supplement).

⁴ Virginia Cellular asked the Commission to redefine the service areas of Shenandoah, NTELOS, and MGW. See Virginia Cellular Petition at 11-12 and Virginia Cellular Reply Comments at 7. See also Virginia Cellular Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed October 21, 2002, at 2 (Virginia Cellular Amendment).

⁵ As discussed below, at this time, we do not designate Virginia Cellular as an ETC in the study area of NTELOS. See *infra* paras. 35, 39. Accordingly, we do not find it necessary to redefine the service area of NTELOS.

⁶ If the Virginia Commission does not agree to our redefinition of the affected rural service areas, we will reexamine our decision with regard to redefining these rural service areas.

Because we do not designate Virginia Cellular as an ETC in NTELOS' study area, we do not redefine this service area.

3. In response to a request from the Commission, the Federal-State Joint Board on Universal Service (Joint Board) is currently reviewing: (1) the Commission's rules relating to the calculation of high-cost universal service support in areas where a competitive ETC is providing service; (2) the Commission's rules regarding support for non-primary lines; and (3) the process for designating ETCs.⁷ Some commenters in that proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas.⁸ The outcome of that proceeding could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive universal service support.

4. While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission. We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding.⁹ These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

II. BACKGROUND

A. The Act

5. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."¹⁰ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (*Referral Order*); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Process*, CC Docket 96-45, 18 FCC Rcd 1941, Public Notice (rel. Feb. 7, 2003) (*Portability Public Notice*).

⁸ See generally, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, United States Telecom Association's Comments, filed May 5, 2003; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Verizon's Comments, filed May 5, 2003.

⁹ See *infra* para. 46.

¹⁰ 47 U.S.C. § 254(e).

and advertise the services supported by the federal universal service mechanisms throughout the designated service area.¹¹

6. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.¹² Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."¹³ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other areas, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁴ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹⁵

B. Commission Requirements for ETC Designation and Redefining the Service Area

7. Filing Requirements for ETC Designation. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;" and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹⁶

¹¹ 47 U.S.C. § 214(e)(1).

¹² 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service, Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

¹³ 47 U.S.C. § 214(e)(6). See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002); *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, Memorandum Opinion and Order, 17 FCC Rcd 21435 (Wireline Comp. Bur. 2002). We note that the Wireline Competition Bureau has delegated authority to perform ETC designations. See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

¹⁴ 47 U.S.C. § 214(e)(6).

¹⁵ *Id.*

¹⁶ *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948-49. See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities*

8. *Twelfth Report and Order*. On June 30, 2002, the Commission released the *Twelfth Report and Order* which, among other things, sets forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹⁷ Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.¹⁸ The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.”¹⁹ The requirement to provide an “affirmative statement” ensures that the state commission has had “a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes of carriers.”²⁰

9. *Redefining a Service Area*. Under section 214(e)(5) of the Act, “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”²¹ Section 54.207(d) of the Commission’s rules permits the Commission to initiate a proceeding to consider a definition of a service area that is different from a rural telephone company’s study area as long as it seeks agreement on the new definition with the applicable state commission.²² Under section 54.207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission’s procedures.²³ In that petition, the Commission must provide its proposal for redefining the service area and its decision presenting reasons for adopting the new definition, including an analysis that takes into account the recommendations of the Federal-State Joint Board on Universal Service (Joint Board).²⁴ When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for the rural telephone companies, the Joint Board made the following observations: (1) the potential for “cream skimming” is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area; (2) the Telecommunications Act of 1996 (1996 Act), in many respects, places rural telephone

Commission, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon. pending.

¹⁷ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁸ *Id.* at 12255, para. 93.

¹⁹ *Id.* at 12264, para. 113.

²⁰ *Id.*

²¹ 47 U.S.C. § 214(e)(5).

²² See 47 C.F.R. § 54.207(d). Any proposed definition will not take effect until both the Commission and the state commission agree upon the new definition. See 47 C.F.R. § 54.207(d)(2).

²³ See 47 C.F.R. § 54.207(d)(1).

²⁴ See *id.* We note that the Wireline Competition Bureau has delegated authority to redefine service areas. 47 C.F.R. § 54.207(e).

companies on a different competitive footing from other local telephone companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level.²⁵

C. Virginia Cellular's Petition

10. On April 26, 2002, Virginia Cellular filed with this Commission a petition, pursuant to section 214(e)(6), seeking designation as an ETC throughout its licensed service area in the Commonwealth of Virginia.²⁶ In its petition, Virginia Cellular contends that the Virginia Commission issued an "affirmative statement" that the Virginia Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, Virginia Cellular asks the Commission to exercise jurisdiction and designate Virginia Cellular as an ETC pursuant to section 214(e)(6).²⁷ Virginia Cellular also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation, and that designating Virginia Cellular as an ETC serves the public interest.²⁸

11. Virginia Cellular also requests the Commission to redefine the service areas of three rural telephone companies, Shenandoah, NTELOS, and MGW, because it is not permitted under its current license to provide facilities-based service to the entire study area of each of these companies.²⁹ Virginia Cellular states that as a wireless carrier, it is restricted to providing facilities-based service only in those areas where it is licensed by the Commission.³⁰ It adds that it is not picking and choosing the "lowest cost exchanges" of the affected rural telephone companies, but instead is basing its requested ETC area solely on its licensed service area and proposes to serve the entirety of that area.³¹ Virginia Cellular contends that the proposed redefinition of the rural telephone companies' service areas is consistent with the recommendations regarding rural telephone company study areas set forth by the Joint Board in its *Recommended Decision*.³²

²⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*1996 Recommended Decision*).

²⁶ See generally, Virginia Cellular Petition. On May 15, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Virginia Cellular Petition. See *Wireline Competition Bureau Seeks Comment on Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No 96-45, Public Notice, 17 FCC Rcd 8778 (Wireline Comp. Bur. 2002); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of Virginia Rural Telephone Companies, filed June 11, 2002 (Virginia Rural Telephone Companies Comments); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Reply Comments of the National Telecommunications Cooperative Association, filed June 17, 2002 (NTCA Comments).

²⁷ Virginia Cellular Petition at 3-4.

²⁸ *Id.* at 1-2, 4-9, 14-17.

²⁹ *Id.* at 10-14. See Supplement to Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed October 11, 2002 at 1-2 (Virginia Cellular October 11 Supplement) and Virginia Cellular Amendment at 2.

³⁰ Virginia Cellular Petition at 13.

³¹ *Id.*

³² *Id.* at 12-14. See also 47 U.S.C. § 214(e)(5).

III. DISCUSSION

12. After careful review of the record before us, we find that Virginia Cellular has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for portions of its licensed service area. First, we find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Virginia Cellular's petition under section 214(e)(6). Second, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC in accordance with section 214(e)(1). In addition, we find that the designation of Virginia Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by providing greater mobility and a choice of service providers to consumers in high-cost and rural areas of Virginia. Pursuant to our authority under section 214(e)(6), we therefore designate Virginia Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia, as set forth below. As explained below, however, we do not designate Virginia Cellular as an ETC in the study area of NTELOS.³³ In areas where Virginia Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Virginia Cellular's ETC designation shall be subject to the Virginia Commission's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Virginia Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future.³⁴ This Order is not intended to prejudice the outcome of that proceeding. We also note that Virginia Cellular always has the option of relinquishing its ETC designation and its corresponding benefits and obligations to the extent that it is concerned about its long-term ability to provide supported services in the affected rural study areas.³⁵

A. Commission Authority to Perform the ETC Designation

13. We find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission has authority to consider Virginia Cellular's petition under section 214(e)(6) of the Act. Specifically, Virginia Cellular states that it submitted an application for designation as an ETC with the Virginia Commission, and on April 9, 2002, the Virginia Commission issued an order stating that it had not asserted jurisdiction over CMRS carriers.³⁶ In its order, the Virginia Commission directed Virginia Cellular to file for ETC designation with the FCC.³⁷ Based on this statement by the Virginia Commission, we find that the Virginia Commission lacks jurisdiction to designate Virginia Cellular as an ETC and that this Commission has authority to perform the requested

³³ See *infra* paras. 35, 39.

³⁴ See *Portability Public Notice*, 18 FCC Rcd at 1941.

³⁵ See *Declaratory Ruling*, 15 FCC Rcd at 15173; see also 47 U.S.C. § 214(e)(4).

³⁶ See Virginia Cellular Petition at 3-4 and Exhibit A.

³⁷ *Id.*

ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6).³⁸

B. Offering and Advertising the Supported Services

14. Offering the Services Designated for Support. We find that Virginia Cellular has demonstrated through the required certifications and related filings, that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service support mechanism. As noted in its petition, Virginia Cellular is an "A-Band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland, as well as the cities of Harrisonburg, Staunton, and Waynesboro.³⁹ Virginia Cellular states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout its cellular service area in Virginia.⁴⁰ Virginia Cellular certifies that it has the capability to offer voice-grade access to the public switched network, and the functional equivalents to DTMF signaling, single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.⁴¹ Virginia Cellular also complies with applicable law and Commission directives on providing access to emergency services.⁴² In addition, although the Commission has not set a minimum local usage requirement, Virginia Cellular certifies it will comply with "any and all minimum local usage requirements adopted by the FCC" and it intends to offer a number of local calling plans as part of its universal service offering.⁴³ As discussed below, Virginia Cellular has committed to report annually its progress in achieving its build-out plans at the same time it submits its annual certification required under sections 54.313 and 54.314 of the Commission's rules.⁴⁴

15. Virginia Cellular has also made specific commitments to provide service to requesting customers in the service areas that it is designated as an ETC. Virginia Cellular states that if a request is made by a potential customer within its existing network, Virginia Cellular will provide service immediately using its standard customer equipment.⁴⁵ In instances where a request comes from a potential customer within Virginia Cellular's licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) the requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to

³⁸ 47 U.S.C. § 214(e)(6).

³⁹ Virginia Cellular Petition at 1.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 4-8 and Exhibit B.

⁴² See 47 C.F.R. § 54.101(a)(5); Virginia Cellular Petition at 7.

⁴³ *Id.* at 5-6 and Exhibit B.

⁴⁴ See *infra* para 46; Virginia Cellular November 12 Supplement at 4.

⁴⁵ *Id.* at 3.

provide service.⁴⁶ In addition, if after following these steps, Virginia Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.⁴⁷

16. Virginia Cellular has further committed to use universal service support to further improve its universal service offering by constructing several new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage.⁴⁸ Virginia Cellular estimates that it will construct 11 cell sites over the first year and a half following ETC designation.⁴⁹ These 11 cell sites will serve a population of 157,060.⁵⁰ Virginia Cellular notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand.⁵¹

17. The Virginia Rural Telephone Companies raise several concerns about Virginia Cellular's service offerings. We address each of these concerns below, and in so doing, we conclude that Virginia Cellular has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. Initially, we note that the Commission has held that to require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.⁵² Instead, "a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service."⁵³

18. We also reject the argument of the Virginia Rural Telephone Companies that Virginia Cellular does not offer all of the services supported by the federal universal service support mechanisms as required by section 214(e)(1)(A).⁵⁴ Specifically, the Virginia Rural Telephone Companies claim that Virginia Cellular: (1) has not yet upgraded from analog to digital and until

⁴⁶ *Id.* at 3-4.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 4-5.

⁴⁹ *Id.* at 4-5 and Attachment. For purposes of this analysis, we exclude Virginia Cellular's proposed cell site in Crimora, Augusta County, Virginia, which would be located in the study area of NTELOS. As discussed above, we deny Virginia Cellular's request for ETC designation in the NTELOS study area.

⁵⁰ *Id.* Virginia Cellular estimates the populations covered by these cell sites as follows: Hinton (population of 65,027), North Harrisonburg (population of 52,750), Churchville (population of 5,865), Spottswood (population of 7,114), Central Nelson (population of 9,354), Middlebrook (population of 4,749), Bergton (population of 2,987), Afton (population of 7,064), McDowell (population of 731), Mustoe (population of 1,094), and West Augusta (population of 325). *Id.* at 5 and Attachment.

⁵¹ *Id.* at 5.

⁵² See *Declaratory Ruling*, 15 FCC Rcd at 15173-74, paras. 12-14. In the *Declaratory Ruling*, the Commission stated that "a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support." *Id.* at 15173, para. 13.

⁵³ *Id.* at 15178, para. 24.

⁵⁴ See Virginia Rural Telephone Companies Comments at 4-6.

this happens, Virginia Cellular cannot effectively implement E-911 or the Communications Assistance for Law Enforcement Act (CALEA); (2) offers no local usage; (3) has stated that its customers will not have equal access to interexchange carriers; (4) states only that it will participate "as required" with respect to Lifeline service; and (5) has wireless signals that are sporadic or unavailable in some of the mountainous regions that Virginia Cellular proposes to serve.⁵⁵

19. We find that Virginia Cellular's commitment to provide access to emergency services is sufficient. Virginia Cellular states that it is in compliance with state and federal 911 and E-911 mandates and is upgrading from analog to digital technology.⁵⁶ Virginia Cellular states that it is implementing Phase I E-911 services in those areas where local governments have developed E-911 functionality and that upon designation as an ETC, it will be able to effectively implement E-911.⁵⁷

20. We find sufficient Virginia Cellular's showing that it will offer minimum local usage as part of its universal service offering. Therefore, we reject the Virginia Rural Telephone Companies' claim that Virginia Cellular should be denied ETC designation because it does not currently offer any local usage.⁵⁸ Although the Commission did not set a minimum local usage requirement, in the *Universal Service Order*, it determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services.⁵⁹ Virginia Cellular states that it will comply with any and all minimum local usage requirements adopted by the FCC.⁶⁰ It adds that it will meet the local usage requirements by including a variety of local usage plans as part of a universal service offering.⁶¹ In addition, Virginia Cellular states that its current rate plans include access to the local exchange network, and that many plans include a large volume of minutes.⁶² Accordingly, we find that Virginia Cellular's commitment to provide local usage is sufficient.

21. We reject the Virginia Rural Telephone Companies' claim that ETC designation should be denied because Virginia Cellular's customers will not have equal access to

⁵⁵ *Id.* at 5-6.

⁵⁶ See Supplement to Virginia Cellular, LLC Petition for Designation as an ETC in the Commonwealth of Virginia, filed October 3, 2002 at 3-4 (Virginia Cellular October 3 Supplement); Virginia Cellular October 11 Supplement at 3.

⁵⁷ See Virginia Cellular Reply Comments at 3.

⁵⁸ Virginia Rural Telephone Companies Comments at 5.

⁵⁹ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service Order*) (subseq. history omitted). Although the Commission's rules define "local usage" as "an amount of minutes of use of wire center service, prescribed by the Commission, provided free of charge to end users," the Commission has not specified a number of minutes of use. See 47 C.F.R. § 54.101(a)(2). See also *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 02J-1 (rel. Jul. 10, 2002) (*Supported Services Recommended Decision*).

⁶⁰ Virginia Cellular Petition at 5-6.

⁶¹ *Id.* at 6.

⁶² Virginia Cellular Reply Comments at 4.

interexchange carriers.⁶³ Section 54.101(a)(7) of the rules states that one of the supported services is access to interexchange services, not equal access to those services.⁶⁴ Virginia Cellular states that it provides access to interexchange services.⁶⁵ Accordingly, we find sufficient Virginia Cellular's showing that it will offer access to interexchange services.

22. We find that Virginia Cellular's commitment to participate in the Lifeline and Linkup programs is sufficient. In its petition, Virginia Cellular states that it currently has no Lifeline customers, and upon designation as an ETC, it will participate in Lifeline as required.⁶⁶ Virginia Cellular also states that it will advertise the availability of Lifeline service to its customers.⁶⁷ Although Virginia Cellular does not currently advertise Lifeline to its customers, we note that the advertising rules for Lifeline and Linkup services apply only to already-designated ETCs.⁶⁸ Thus, we find sufficient Virginia Cellular's commitment to participate in Lifeline and Linkup.

23. Although the Virginia Rural Telephone Companies claim that Virginia Cellular's wireless signals are sporadic in certain areas, we find that the existence of so-called "dead spots" in Virginia Cellular's network does not preclude us from designating Virginia Cellular as an ETC. The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.⁶⁹ Moreover, as stated above, Virginia Cellular has committed to improve its network.⁷⁰ In addition, the Commission's rules acknowledge the existence of dead spots.⁷¹ "Dead spots" are defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service."⁷² Section 22.99 of the Commission's rules states that "[s]ervice within dead spots is presumed."⁷³ Additionally, the Commission's rules provide that "cellular service is considered to be provided in all areas, including dead spots . . ."⁷⁴ Because "dead spots" are acknowledged by the Commission's rules, we are not persuaded by the Virginia Rural LECs that the possibility of

⁶³ Virginia Rural Telephone Companies Comments at 5.

⁶⁴ 47 C.F.R. §54.101(a)(7). We note that in July 2002, four members of the Joint Board recommended adding equal access as a supported service. *See Supported Services Recommended Decision*, at paras. 75-86. In July 2003, the Commission decided to defer consideration of this issue pending resolution of the Commission's proceeding examining the rules relating to high-cost universal service support in competitive areas. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 15,090, 15,104, para. 33 (2003).

⁶⁵ Virginia Cellular Reply Comments at 4-5.

⁶⁶ Virginia Cellular Petition at 8.

⁶⁷ Virginia Cellular Reply Comments at 5.

⁶⁸ *See Twelfth Report and Order*, 15 FCC Rcd at 12249-50, para. 76-80.

⁶⁹ *See Declaratory Ruling*, 15 FCC Rcd at 15175, para. 17.

⁷⁰ *See supra* para. 16; Virginia Cellular Petition at 2, 17 and Virginia Cellular October 3 Supplement at 2, Virginia Cellular November 12 Supplement at 4-5 and Attachment.

⁷¹ *See* 47 C.F.R. § 22.99.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *See* 47 C.F.R. § 22.911(b).

dead spots demonstrates that Virginia Cellular is not willing or capable of providing acceptable levels of service throughout its service area.

24. Offering the Supported Services Using a Carrier's Own Facilities. Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁷⁵ Virginia Cellular states that it intends to provide the supported services using its cellular network infrastructure, which includes "the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers."⁷⁶ We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

25. Advertising the Supported Services. We conclude that Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.⁷⁷ Virginia Cellular certifies that it "will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission."⁷⁸ In addition, Virginia Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Virginia Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Virginia Cellular's service offerings and learn about Lifeline and Linkup discounts.⁷⁹ Virginia Cellular also commits to publicize locally the construction of all new facilities in unserved or underserved areas so customers are made aware of improved service.⁸⁰ We find that Virginia Cellular's certification and its additional commitments to advertising its service offerings satisfy section 214(e)(1)(B). In addition, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.⁸¹

C. Public Interest Analysis

26. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies Bell Atlantic and GTE South, Inc. We also conclude that it is in the public interest to designate Virginia Cellular as an ETC in Virginia in the study areas served by five of the six affected rural telephone companies. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Virginia Cellular has satisfied the burden of proof in establishing

⁷⁵ 47 U.S.C. § 214(e)(1)(A).

⁷⁶ Virginia Cellular Petition at 9.

⁷⁷ 47 U.S.C. § 214(e)(1)(B).

⁷⁸ Virginia Cellular Petition at 9.

⁷⁹ Virginia Cellular November 12 Supplement at 5.

⁸⁰ *Id.*

⁸¹ See *Pine Ridge Order*, 16 FCC Rcd at 18137, para. 10.

that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Virginia Cellular as an ETC, however, for the study area of NTELOS because we find that Virginia Cellular has not satisfied its burden of proof in this instance.⁸²

27. Non-Rural Study Areas. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies of Bell Atlantic and GTE South.⁸³ We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act.⁸⁴ We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Virginia Cellular's public interest showing here is sufficient based on the detailed commitments Virginia Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Virginia Cellular has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.⁸⁵ We also note that no parties oppose Virginia Cellular's request for ETC designation in the study areas of these non-rural telephone companies. We therefore conclude that Virginia Cellular has demonstrated that its designation as an ETC in the study areas of these non-rural telephone companies, is consistent with the public interest, as required by section 214(e)(6).⁸⁶ We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate ETCs in both rural and non-rural carrier study areas under section 214(e) of the Act.⁸⁷ The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

28. Rural Study Areas. Based on the record before us, we conclude that grant of this ETC designation for the requested rural study areas, in part, is consistent with the public interest. In considering whether designation of Virginia Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any

⁸² See *infra* para. 35.

⁸³ See 47 U.S.C. § 214(e)(6). See also Appendix A.

⁸⁴ See, e.g., *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 39 (Com. Car. Bur. 2000).

⁸⁵ See Virginia Cellular November 12 Supplement at 4-5, Attachment; *infra* para. 28.

⁸⁶ See 47 U.S.C. § 214(e)(6).

⁸⁷ See *Portability Public Notice*, 18 FCC Rcd at 1954-55, para. 33.

commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudge the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

29. Virginia Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Virginia Cellular has committed to serve residences to the extent that they do not have access to the public switched network through the incumbent telephone company.⁸⁸ Also, the mobility of Virginia Cellular's wireless service will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.⁸⁹ Virginia Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Virginia Cellular's customers will be subject to fewer toll charges.⁹⁰

30. We acknowledge arguments made in the record that wireless telecommunications offerings may be subject to dropped calls and poor coverage.⁹¹ Parties also have noted that wireless carriers often are not subject to mandatory service quality standards.⁹² Virginia Cellular has committed to mitigate these concerns. Virginia Cellular assures the Commission that it will alleviate dropped calls by using universal service support to build new towers and facilities to offer better coverage.⁹³ As evidence of its commitment to high service quality, Virginia Cellular has also committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service.⁹⁴ In addition, Virginia Cellular has committed to provide

⁸⁸ Virginia Cellular November 12 Supplement at 3-4. According to Virginia Cellular, 11 out of 12 of its proposed cell sites contain some area that is unserved by Virginia Cellular's facilities and/or wireline networks. *See id.* at 3; *but see* Virginia Rural Telephone Companies Comments at 3 (stating that there is an incumbent ETC in all the areas where Virginia Cellular seeks ETC designation).

⁸⁹ Virginia Cellular Petition at 16 (citing *Smith Bagley, Inc.*, Order, Decision No. 63269, Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2001) (finding that competitive entry provides a potential solution to "health and safety risks associated with geographic isolation"). *See also Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

⁹⁰ *See* Virginia Cellular Petition at 17; Virginia Cellular April 3 Supplement at 1-2.

⁹¹ *See e.g.*, Virginia Rural Telephone Companies Comments at 6; 12 Va. Admin. Code § 5-400-80.

⁹² *See* Virginia Rural Telephone Companies Comments at 6; 12 Va. Admin. Code § 5-400-80.

⁹³ *See* Virginia Cellular November 12 Supplement at 1.

⁹⁴ *Id.*; CTIA, *Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising;

the Commission with the number of consumer complaints per 1,000 handsets on an annual basis.⁹⁵ Therefore, we find that Virginia Cellular's commitment to provide better coverage to unserved areas and its other commitments discussed herein adequately address any concerns about the quality of its wireless service.

31. Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs.⁹⁶ Specifically, although competitive ETCs only receive a small percentage of all high-cost universal service support, the amount of high-cost support distributed to competitive ETCs is growing at a dramatic pace. For example, in the first quarter of 2001, three competitive ETCs received approximately \$2 million or 0.4 percent of high-cost support.⁹⁷ In the fourth quarter of 2003, 112 competitive ETCs are projected to receive approximately \$32 million or 3.7 percent of high-cost support.⁹⁸ This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. Specifically, commenters argue that designation of competitive ETCs will place significant burdens on the federal universal service fund without any corresponding benefits.⁹⁹ We recognize these commenters raise important issues regarding universal service support. As discussed above, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.¹⁰⁰ We note that the outcome of the Commission's pending proceeding examining the rules relating to

(6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. *See id.*

⁹⁵ *See infra* para. 46 (requesting that Virginia Cellular provide consumer complaint data on October 1 of each year).

⁹⁶ For example, assuming, that Virginia Cellular captures each and every customer located in the five affected rural study areas, the overall size of the high-cost support mechanisms would not significantly increase because the total amount of high-cost universal service support available to incumbent carriers in the rural study areas where we grant Virginia Cellular ETC designation is only approximately 0.105% percent of the total high-cost support available to all ETCs. *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003, Appendix HC 1 (Universal Service Administrative Company, August 1, 2003) (determining that the total amount of high-cost universal service support available to incumbent carriers in the affected rural study areas is projected to be \$899,706 out of a total of \$857,903,276 in the fourth quarter of 2003). We note, however, in light of the rapid growth in competitive ETCs, comparing the impact of one competitive ETC on the overall fund may be inconclusive. We hope that the Joint Board will speak to this issue in the proceeding addressing rules relating to high-cost support in competitive areas.

⁹⁷ *See* Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2001 (Universal Service Administrative Company, Jan. 31, 2002).

⁹⁸ Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003 (Universal Service Administrative Company, Aug. 1, 2003). At the same time, we recognize that high-cost support to incumbent ETCs has grown significantly in real and percentage terms over the same period. *See generally, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Cellular Telecommunications Industry Association's Comments, filed May 5, 2003.

⁹⁹ *See* Virginia Rural Telephone Companies Comments at 2-4; NTCA Comments at 2-4, 8-9.

¹⁰⁰ *See Portability Public Notice.*

high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.

32. Additionally, we conclude that, for most of the rural areas in which Virginia Cellular seeks ETC designation, such designation does not raise the rural creamskimming and related concerns alleged by commenters.¹⁰¹ Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area.¹⁰² In this case, because the contour of its CMRS licensed area differs from the existing rural telephone companies' study areas, Virginia Cellular will be unable to provide facilities-based service to the entirety of the study areas of three of the six affected rural telephone companies - Shenandoah, MGW, and NTELOS. Generally, a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner intends to creamskim in the rural study area.¹⁰³ In this case, however, Virginia Cellular commits to provide universal service throughout its licensed service area.¹⁰⁴ It therefore does not appear that Virginia Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

33. At the same time, we recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier's license covers.¹⁰⁵ Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming.

34. We have analyzed the record before us in this matter and find that, for the study areas of Shenandoah and MGW, Virginia Cellular's designation as an ETC is unlikely to undercut the incumbents' ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers reveals that, for the study areas of MGW and Shenandoah, Virginia Cellular will not be serving only low-cost areas to the exclusion of high-cost areas.¹⁰⁶ Although

¹⁰¹ See NTCA Comments at 5-6; see also Virginia Rural Telephone Companies Comments at 11.

¹⁰² See 1996 Recommended Decision, 12 FCC Rcd at 180, para. 172. "Creamskimming" refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. See, e.g., Universal Service Order, 12 FCC Rcd at 8881-2, para. 189.

¹⁰³ See 1996 Recommended Decision, 12 FCC Rcd at 180, para. 172 (stating that potential creamskimming is minimized when competitors, as a condition of eligibility for universal service support, must provide services throughout a rural telephone company's study area).

¹⁰⁴ See Virginia Cellular Petition at 2, 13.

¹⁰⁵ See NTCA Comments at 5.

¹⁰⁶ The Virginia Rural Telephone Companies express concerns about use of the term "wire center" versus "exchange" as the relevant area designated for support. See Virginia Rural Telephone Companies November 8, 2002 *ex parte* (stating that, in Virginia, the defined area for regulatory purposes is "exchange"). Virginia Cellular responded that the rural ILEC exchanges in Virginia contain a single wire center and therefore use of the term "wire center" is synonymous with "exchange." See Virginia Cellular November 20 Supplement at 2. The Virginia Rural Telephone Companies also state "generally, in rural companies there is one wire center per exchange." See Virginia Rural Telephone Companies November 8 *ex parte*. We note that the Commission has historically viewed high cost

there are other factors that define high-cost areas, a low population density typically indicates a high-cost area.¹⁰⁷ Our analysis of population density reveals that Virginia Cellular is serving not only the lower cost, higher density wire centers in the study areas of MGW and Shenandoah.¹⁰⁸ The population density for the Shenandoah wire center for which Virginia Cellular seeks ETC designation is approximately 4.64 persons per square mile and the average population density for Shenandoah's remaining wire centers is approximately 53.62 persons per square mile.¹⁰⁹ The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile.¹¹⁰

35. We conclude, however, for the following reasons, that it would not be in the public interest to designate Virginia Cellular as an ETC in the study area of NTELOS. Virginia Cellular's licensed CMRS area covers only the Waynesboro wire center in NTELOS' study area. Based on our examination of the population densities of the wire centers in NTELOS' study area, we find that Waynesboro is the lowest-cost, highest-density wire center in the study area of NTELOS, and that there is a great disparity in density between the Waynesboro wire center and the NTELOS wire centers outside Virginia Cellular's service area. The population density in the Waynesboro wire center is approximately 273 persons per square mile, while the average population density of the remaining wire centers in NTELOS' study area is approximately 33

support in terms of wire centers. See, e.g., 47 U.S.C. § 54.309. Thus, consistent with our rules, hereinafter in this order, we will discuss support in terms of wire centers.

¹⁰⁷ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, para. 28 (2001) (*MAG Order*), recon. pending (discussing Rural Task Force White Paper 2 at <<http://www.wutc.wa.gov/rtf>>) (stating that "[r]ural carriers generally serve more sparsely populated areas and fewer large, high-volume subscribers than non-rural carriers" and that "[t]he isolation of rural carrier service areas creates numerous operational challenges, including high loop costs, high transportation costs for personnel, equipment, and supplies, and the need to invest more resources to protect network reliability").

¹⁰⁸ See Virginia Cellular October 29 Supplement. We note that the Virginia Rural Telephone Companies object to accuracy of the population density data submitted by Virginia Cellular. Rather than submitting different population density data, however, the Virginia Rural Telephone Companies submitted line count data. See Virginia Rural Telephone Companies November 8 *ex parte*. Virginia Cellular's response is that it calculated population density using the software program Exchange Plus by MapInfo, which allows a user to "simultaneously query an ILEC's exchange and the Census Bureau population database." See Virginia Cellular November 20 Supplement. Virginia Cellular asserts that this software is commonly used in the telecommunications industry and yields accurate data. *Id.* Our review of the line count data submitted by the Virginia Rural Telephone Companies reveals that Virginia Cellular will be serving many of the high-cost, low-density wire centers in the study areas of MGW and Shenandoah. Accordingly, this line count analysis is consistent with the population density analysis that was based on data submitted by Virginia Cellular.

¹⁰⁹ See Virginia Cellular October 29 Supplement.

¹¹⁰ See *id.* Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise creamskimming concerns. We also note that there is very little disparity between the population densities of the wire centers in the MGW study area.

persons per square mile.¹¹¹ Universal service support is calculated on a study-area-wide basis. Although NTELOS did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower-cost area,¹¹² we find on the facts here that designating Virginia Cellular as an ETC only for the Waynesboro wire center could potentially significantly undermine NTELOS' ability to serve its entire study area. The widely disparate population densities in NTELOS' study area and the status of Waynesboro as NTELOS' sole low-cost, high-density wire center could result in such an ETC designation placing NTELOS at a sizeable unfair competitive disadvantage. In addition, we believe that, if NTELOS had disaggregated, the low costs of service in the Waynesboro wire center would have resulted in little or no universal service support targeted to those lines.¹¹³ Therefore, our decision not to designate Virginia Cellular as an ETC in the study area of NTELOS is unlikely to impact consumers in the Waynesboro wire center because Virginia Cellular will make a business decision on whether to provide service in that area without regard to the potential receipt of universal service support.

D. Designated Service Area

36. Virginia Cellular is designated an ETC in the areas served by the non-rural carriers Bell Atlantic and GTE South, as listed in Appendix A.¹¹⁴ We designate Virginia Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 6 Rural Service Area. Virginia Cellular is designated an ETC in the areas served by the three rural telephone companies whose study areas Virginia Cellular is able to serve completely, as listed in Appendix B.¹¹⁵ As discussed below, and subject to the Virginia Commission's agreement on redefining the

¹¹¹ See *id.*

¹¹² In the *RTF Order*, the Commission provided incumbent LECs with certain options for disaggregating their study areas, determining that universal service support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area. Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service. There are fewer issues regarding inequitable universal service support and potential harm to concerns regarding the incumbent's ability to serve its entire study area when there is in place a disaggregation plan in which the per-line support available to a competitive ETC in the wire centers located in "low-cost" zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the "high-cost" zones. See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11302, para. 145 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), *recon. pending*. Although the deadline (May 15, 2002) for carriers to file disaggregation plans has passed, the relevant state commission or appropriate regulatory authority may nonetheless require a carrier to disaggregate, either on its own motion or that of an interested party. See USAC's website, <http://www.universalservice.org/hc/disaggregation>; see also *RTF Order*, 16 FCC Rcd at 11303, para. 147.

¹¹³ Section 54.315(d)(2)(ii) of the Commission's rules requires self-certified disaggregation plans to "be reasonably related to the cost of providing service for each disaggregation zone within each disaggregated category of support." 47 C.F.R. § 54.315(d)(2)(ii).

¹¹⁴ See Virginia Cellular Petition at 10 and Exhibit D. We note that, when designating a service area served by a non-rural carrier, the Commission may designate a service area that is smaller than the contours of the incumbent carrier's study area. See *Universal Service Order*, 12 FCC Rcd at 8879-90, paras. 184-85.

¹¹⁵ See Virginia Cellular Petition at 10-11 and Exhibit E.

service areas of MGW and Shenandoah, we also designate Virginia Cellular as an ETC for the entire Bergton, McDowell, Williamsville, and Deerfield wire centers.

37. We designate Virginia Cellular as an ETC in the entire Deerfield, McDowell, and Williamsville wire centers in the study area of MGW.¹¹⁶ We note that, although the boundaries of its CMRS licensed service area in Virginia exclude a small part of MGW's Williamsville wire center, Virginia Cellular has committed nevertheless to offer service to customers in the entirety of the Williamsville wire center through a combination of its own facilities and resale of either wireless or wireline services.¹¹⁷

38. We also designate Virginia Cellular as an ETC for the Bergton wire center in Shenandoah's study area. We note that the study area of Shenandoah is composed of two non-contiguous areas. One such area is composed solely of the Bergton wire center, which falls within Virginia Cellular's licensed service area, and the other area is composed of eight remaining wire centers, which fall outside of Virginia Cellular's licensed service area.¹¹⁸ We find that, because the Bergton wire center is a low-density, high-cost wire center, concerns about undermining Shenandoah's ability to serve the entire study area are substantially minimized. We further note that the Commission has previously expressed concern about requiring competitive ETCs to serve non-contiguous areas. In the *Universal Service Order*, the Commission concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of eligibility might impose a serious barrier to entry, particularly to wireless carriers.¹¹⁹ The Commission further concluded that "imposing additional burdens on wireless entrants would be particularly harmful in rural areas..."¹²⁰ Accordingly, we find that denying Virginia Cellular ETC status for Shenandoah's Bergton wire center simply because Virginia Cellular is not licensed to serve the eight remaining wire centers would be inappropriate. Thus, we conclude that it is appropriate to designate Virginia Cellular as an ETC for the Bergton wire center within Shenandoah's study area.

39. Finally, for the reasons described above, we do not designate Virginia Cellular as an ETC in any portion of NTELOS' service area.¹²¹

E. Redefining Rural Telephone Company Service Areas

40. We redefine the service areas of MGW and Shenandoah pursuant to section 214(e)(5). Consistent with prior rural service area redefinitions, we redefine each wire center in

¹¹⁶ MGW's study area consists of the Deerfield, McDowell, Williamsville, Mountain Grove, and McClung wire centers. Virginia Cellular is licensed to completely serve the Deerfield and McDowell wire centers and to partially serve the Williamsville wire center. See Virginia Cellular Amendment at 2.

¹¹⁷ See Appendix C. Virginia Cellular's wireless license covers all but approximately 200 people in 13.5 square miles of the Williamsville wire center. See Virginia Cellular October 11 Supplement at 2; Virginia Cellular April 17 Supplement at 2.

¹¹⁸ The other wire centers within Shenandoah's study area are: Bayse, Edinburg, Fort Valley, Mount Jackson, New Market, Strasburg, Toms Brook, and Woodstock, all in Virginia.

¹¹⁹ *Universal Service Order*, 12 FCC Rcd at 8882, para. 190.

¹²⁰ *Id.* at 8883, para. 190.

¹²¹ See *supra* para. 35.

the MGW and Shenandoah study areas as a separate service area.¹²² Our decision to redefine the service areas of these telephone companies is subject to the review and final agreement of the Virginia Commission in accordance with applicable Virginia Commission requirements. Accordingly, we submit our redefinition proposal to the Virginia Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

41. In order to designate Virginia Cellular as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act.¹²³ We define the affected service areas only to determine the portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in the same rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will be required to demonstrate that such designation will be in the public interest.¹²⁴ In defining the rural telephone companies' service areas to be different than their study areas, we are required to act in concert with the relevant state commission, "taking into account the recommendations" of the Joint Board.¹²⁵ The Joint Board's concerns regarding rural telephone company service areas as discussed in the *1996 Recommended Decision* are as follows: (1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.¹²⁶ We find that the proposed redefinition properly addresses these concerns.

42. First, we conclude that redefining the affected rural telephone company service areas at the wire center level for MGW and Shenandoah should not result in opportunities for creamskimming. Because Virginia Cellular is limited to providing facilities-based service only where it is licensed by the Commission and because Virginia Cellular commits to providing universal service throughout its licensed territory in Virginia, concerns regarding creamskimming are minimized.¹²⁷ In addition, we have analyzed the population densities of the wire centers Virginia Cellular can and cannot serve to determine whether the effects of creamskimming would occur.¹²⁸ We note that we do not propose redefinition in areas where ETC designation would potentially undermine the incumbent's ability to serve its entire study

¹²² See *RCC Holdings ETC Designation Order*, 17 FCC Rcd at 23547, para. 37. We do not designate Virginia as an ETC in the study area of NTELOS. Thus, we do not redefine the service area of NTELOS. In its original petition, Virginia Cellular stated that the Commission might choose not to redefine the service area of MGW, because Virginia Cellular serves all but a small portion of MGW's study area. See Virginia Cellular Petition at 12. Subsequently, Virginia Cellular amended its petition, explaining that there are two additional wire centers (McClung and Mountain Grove) within MGW's service area that it does not propose to serve. See Virginia Cellular Amendment at 2. In its amended petition, Virginia Cellular asks the Commission to reclassify each of MGW's five wire centers as separate service areas. *Id.*

¹²³ See 47 U.S.C. § 214(e)(5).

¹²⁴ See 47 U.S.C. § 214(e)(2), (6).

¹²⁵ See 47 U.S.C. § 214(e)(5).

¹²⁶ See *1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

¹²⁷ See *supra* para. 32.

¹²⁸ See *supra* paras. 32-35.

area.¹²⁹ Therefore, we conclude, based on the particular facts of this case, that there is little likelihood of rural creamskimming effects in redefining the service areas of MGW and Shenandoah as proposed.

43. Second, our decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas.¹³⁰ Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives.¹³¹ Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.¹³² Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

44. Third, we find that redefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

45. In accordance with section 54.207(d) of the Commission's rules, we submit this order to the Virginia Commission.¹³³ We request that the Virginia Commission treat this Order as a petition to redefine a service area under section 54.207(d)(1) of the Commission's rules.¹³⁴ Virginia Cellular's ETC designation in the service areas of Shenandoah and MGW is subject to the Virginia Commission's review and agreement with the redefinition proposal herein.¹³⁵ We

¹²⁹ See *supra* para. 35.

¹³⁰ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

¹³¹ See *RTF Order*, 16 FCC Rcd at 11299-11309, paras. 136-164.

¹³² See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

¹³³ 47 C.F.R. § 54.207(d).

¹³⁴ Virginia Cellular submits that the Commonwealth of Virginia has no process for redefining service areas. See Virginia Cellular October 11 Supplement at 2.

¹³⁵ In the *Universal Service Order*, the Commission decided to minimize any procedural delays caused by the need for the federal-state coordination on redefining rural service areas. See *Universal Service Order*, 12 FCC Rcd at 8880-81, para. 187. Therefore, the Commission adopted section 54.207 of the Commission's rules by which the state commissions may obtain agreement of the Commission when proposing to redefine a rural service area. *Id.* at 8881, para. 188. Similarly, the Commission adopted a procedure in section 54.207 to address the occasions when the Commission seeks to redefine a rural service area. *Id.* The Commission stated that "in keeping with our intent

find that the Virginia Commission is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service areas of Shenandoah and MGW, our designation of Virginia Cellular as an ETC for these areas as set forth herein shall also take effect. In all other areas for which this Order grants ETC status to Virginia Cellular, as described herein, such designation is effective immediately. If, after its review, the Virginia Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Virginia Cellular's petition with regard to redefining the affected rural service areas.

F. Regulatory Oversight

46. We note that Virginia Cellular is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under sections 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement.¹³⁶ Separate and in addition to its annual certification filing under sections 54.313 and 54.314 of our rules, Virginia Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC.¹³⁷ Virginia Cellular also has committed to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service and provide the number of consumer complaints per 1,000 mobile handsets on an annual basis.¹³⁸ In addition, Virginia Cellular will annually submit information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year.¹³⁹ We require that Virginia Cellular submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004.¹⁴⁰ We find that reliance on Virginia Cellular's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.¹⁴¹ We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Virginia Cellular satisfies its obligation under section 214(e) of the Act to provide

to use this procedure to minimize administrative delay, we intend to complete consideration of any proposed definition of a service area promptly." *Id.*

¹³⁶ 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314.

¹³⁷ See Virginia Cellular November 12 Supplement at 4-5.

¹³⁸ See *supra* para. 30; Virginia Cellular November 12 Supplement at 1.

¹³⁹ See *supra* para. 15; Virginia Cellular November 12 Supplement at 2.

¹⁴⁰ Virginia Cellular's submissions concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year. We anticipate that Virginia Cellular's annual submission will only encompass the service areas where it is designated as an ETC.

¹⁴¹ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) In *TOPUC v. FCC*, the Fifth Circuit held that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. See *id.* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

supported services throughout its designated service area. We adopt the commitments that Virginia Cellular has made as conditions on our approval of its ETC designation for the Commonwealth of Virginia. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC.¹⁴² Virginia Cellular will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Virginia Cellular fails to fulfill the requirements of the statute, our rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.¹⁴³ The Commission also may assess forfeitures for violations of Commission rules and orders.¹⁴⁴

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

47. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.¹⁴⁵ Virginia Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.¹⁴⁶ We find that Virginia Cellular has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), Virginia Cellular, LLC IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for specified portions of its licensed service area in the Commonwealth of Virginia subject to the conditions described herein.¹⁴⁷

49. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 54.207(d) and (e), the request of Virginia Cellular, LLC to redefine the service areas of Shenandoah Telephone Company and MGW Telephone Company in Virginia IS GRANTED, SUBJECT TO the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service areas for these rural telephone companies. Upon the effective date of the agreement of the Virginia State Corporation

¹⁴² 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

¹⁴³ See *Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. See also 47 U.S.C. § 254(e).

¹⁴⁴ See 47 U.S.C. § 503(b).

¹⁴⁵ 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

¹⁴⁶ Virginia Cellular Petition at 18. See also Supplement to Virginia Cellular, LLC Petition for Designation as an ETC in the Commonwealth of Virginia, filed February 28, 2003.

¹⁴⁷ See *supra* para. 46.

Commission with the Commission's redefinition of the service areas for those rural telephone companies, this designation of Virginia Cellular, LLC as an ETC for such areas as set forth herein shall also take effect.

50. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 54.207(d) and (e), the request of Virginia Cellular, LLC to redefine the service area of NTELOS Telephone Inc. in Virginia IS DENIED.

51. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Office of the Secretary to the Virginia State Corporation Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

VIRGINIA NON-RURAL WIRE CENTERS FOR INCLUSION IN VIRGINIA
CELLULAR'S ETC SERVICE AREA

Bell Atlantic (Verizon)	GTE South, Inc. (Verizon)
Staunton (STDRVASD)*	Broadway
Staunton (STTNVAST)	Edom
Staunton (STTNVAVE)	Hinton
Craigsville	Dayton
Lovingston (NLFRVANF)	Keezletown
Lovingston (LVTNVALN)	Harrisonburg
Lovingston (WNTRVAWG)	McGaheysville
Greenwood	Bridgewater
Pine River	Weyerscave
	Grottoes
	Elkton
	Amherst
	Gladstone

* Because the wire center locality names are the same in some instances, the Wire Center Codes are listed in parentheses.

APPENDIX B

**VIRGINIA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN
VIRGINIA CELLULAR'S ETC SERVICE AREA**

New Hope Telephone Company

North River Telephone Company

Highland Telephone Cooperative

APPENDIX C

**VIRGINIA RURAL TELEPHONE COMPANY WIRE CENTERS
FOR INCLUSION IN
VIRGINIA CELLULAR'S ETC SERVICE AREA**

Shenandoah Telephone Company

Bergton

MGW Telephone Company

McDowell

Williamsville

Deerfield

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

Competition is for rural as well as urban consumers. In this item, we recognize the unique value that mobile services provide to rural consumers by giving added substance to the public interest standard by which we evaluate wireless eligible telecommunications carriers (ETC). At the same time, we reinforce the requirement that wireless networks be ready, willing and able to serve as carriers of last resort to support our universal service goals.

The areas Virginia Cellular proposes to serve are indeed rural – they are areas where retail rates do not cover the cost of providing service and where high-quality wireless service is intermittent or scarce. This decision remains true to the requirement that ETCs must be prepared to serve all customers upon reasonable request and requires them to offer high-quality telecommunications services at affordable rates throughout the designated service area. In this case, Virginia Cellular has documented its proposed use of federal universal service funding and made important commitments to provide high-quality service throughout its designated service area. To ensure that Virginia Cellular abides by its commitments, moreover, we have imposed reporting requirements and, of course, retain the right to conduct audits and other regulatory oversight activities, if necessary.

Despite the importance of making rural, facilities-based competition a reality, we must ensure that increasing demands on the fund should not be allowed to threaten its viability. Incumbent local exchange carriers, competitive local exchange carriers and wireless carriers should have a competitively neutral opportunity to receive universal service funding. Yet determining an effective, equitable and affordable means of balancing competition and universal service goals is no easy task. The Federal-State Joint Board on Universal Service (Joint Board) is now considering a comprehensive record on these issues and plans to provide a recommended decision to us. I urge them to conclude their inquiry as expeditiously as possible in light of the complexity of the issues involved. Once we receive recommendations from the Joint Board, I hope to move quickly to provide much-needed regulatory certainty in this area and to ensure the support necessary to maintain a sustainable, competitively neutral universal service fund.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

In this Order, the Commission has taken an important (albeit incremental) step toward establishing a more rigorous framework for evaluating ETC applications. When the Commission initially exercised its authority to grant ETC status in areas where state commissions lack jurisdiction, it appeared to regard entry by any new competitor as *per se* consistent with the public interest. While promoting competition is undoubtedly a core goal under the Telecommunications Act of 1996, the use of universal service funding to engender competition where market forces alone cannot support it presents a more complex question. Particularly in rural study areas, where the cost of providing service typically far exceeds retail rates, regulators must carefully consider whether subsidizing the operations of an additional ETC promotes the public interest.

The Joint Board is developing comprehensive recommendations on the ETC designation process and the appropriate scope of support, and this isolated case is not an appropriate proceeding in which to make any fundamental changes. Nevertheless, to qualify for support even under our existing rules, I believe that an ETC must be prepared to serve all customers upon reasonable request, and it must offer high-quality services at affordable rates throughout the designated service area. State commissions exercising their authority under section 214(e)(2), and this Commission acting pursuant to section 214(e)(6), therefore should make certain that an applicant for ETC status is ready, willing, and able to serve as a carrier of last resort and is otherwise prepared to fulfill the goals set forth in section 254 of the Act.

To this end, I am pleased that the Commission has required Virginia Cellular to submit build-out plans to document its proposed use of federal universal service funding for infrastructure investment. I also support the Commission's insistence on appropriate service-quality commitments. Moreover, the Commission is right to consider the increasing demands on the universal service fund: While at one point the cost of granting ETC status to new entrants may have appeared trifling, the dramatic rate of growth in the flow of funds to competitive ETCs compels us to consider the overall impact of new ETC designations on the stability and sustainability of universal service. Finally, I strongly support our efforts to beef up regulatory oversight by imposing reporting requirements on Virginia Cellular and by reserving the right to conduct audits and revoke this ETC designation in the event of a failure to fulfill the requirements of the statute and this Order. All of these requirements are consistent with the statutory framework. The Joint Board may soon recommend that this Commission and state commissions impose additional requirements, and I eagerly await the outcome of that proceeding.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.*

Today we grant Virginia Cellular eligible telecommunication carrier (ETC) status in study areas served by rural and non-rural telephone companies. We make some headway in this decision toward articulating a more rigorous template for review of ETC applications. Although I support this grant, I believe that the ETC process needs further improvement. The long-term viability of universal service requires that the Commission get the ETC designation process right. We must give serious consideration to the consequences that flow from using the fund to support multiple competitors in truly rural areas. And when we do fund competition, we need to ensure that we provide the appropriate level of support. For these reasons, I look forward to reviewing the Joint Board's upcoming Recommendation on universal service portability and ETC designation. I am hopeful that this document will lay the foundation for an improved approach that both honors the public interest and reflects the realities of the market.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

Late last year, I had the opportunity to further outline my thoughts on the Commission's eligible telecommunications carrier (ETC) designation process and the role of the public interest in that process.¹ For the reasons discussed at that time, I am pleased to support this Order responding to the petition of Virginia Cellular, LLC to be designated as an ETC in the Commonwealth of Virginia. I believe this Order establishes a better template for the ETC designation process that is a significant improvement from past Commission decisions and that more fully embraces the statutory public interest mandate. I expect that state commissions also will find the template that we adopt here to be useful in their deliberations of ETC requests.

I am confident that this Order remains true to the Communications Act, which, through Universal Service, requires the Commission to ensure that all Americans, whoever they are or wherever they live, have access to a rapid and efficient communications system at reasonable rates. Congress clearly intended that, when appropriate, competitive carriers should have access to high cost funds on a technologically neutral basis. I believe the Federal-State Joint Board on Universal Service (Joint Board) can play a critical role in determining the parameters of where such competition is appropriate. I am pleased, however, that this Commission has been willing to strengthen the public interest test, pending a Joint Board recommendation. The template established in this Order provides a much more stringent examination of the public interest in making our ETC determination. Among other factors, Virginia Cellular has made significant investment and service quality commitments throughout its proposed service areas. Finally, I believe that our Order conducts a thorough and proper analysis of rural telephone company service areas pursuant to Section 214(e)(5). Indeed, we ultimately decided not to designate Virginia Cellular as an ETC in certain portions of its licensed service area. In other areas, it was determined, based on a detailed review of the affected service areas, that cream skimming or other similar concerns do not arise, and these areas ultimately are proposed for redefinition.

I look forward to working with my colleagues both at the Commission and on the Joint Board to provide further guidance on the ETC designation process and other Universal Service support issues in the upcoming months. As I outlined in the attached remarks, I believe there are many constructive actions we can take to make sure our Universal Service mandate is upheld while still ensuring that the fund does not grow dramatically.

¹ Commissioner Jonathan S. Adelstein, *Accessing the Public Interest: Keeping America Well-Connected*, Address Before the 21st Annual Institute on Telecommunications Policy & Regulation (Dec. 4, 2003) (<http://www.fcc.gov/commissioners/adelstein/speeches2003.html>). A copy of the remarks is incorporated into this statement.

**Remarks of
Jonathan S. Adelstein
Commissioner, Federal Communications Commission**

**“Accessing the Public Interest:
Keeping America Well-Connected”
21st Annual Institute on Telecommunications Policy & Regulation
The International Trade Center - Washington, DC
December 4, 2003
[As prepared for delivery]**

I. Introduction

Thank you Henry for that kind introduction.

There is no greater opportunity for someone who has dedicated his whole life to public service than to serve as an FCC Commissioner. My singular goal is to serve the public interest. But sometimes the hardest part is figuring out what that means. It is especially frustrating in the context of communications policy, because we hear so many conflicting views from parties with big stakes in the outcome.

Winston Churchill once described Russia as “a riddle, wrapped in a mystery, inside of an enigma.” Similar terms are used to describe the public interest standard of the FCC. As an eternal optimist, I still believe the public interest does exist and can be a meaningful standard. It is our job to figure it out, since Congress referred to it over 100 times in the Communications Act. If we are not sure what it means any given case, it is job number one to figure it out.

Looking back over the past year and across the Commission’s broad jurisdiction, I am guided in my public interest determinations by one key principle – that the public interest means securing access to communications for everyone, including those the market may leave behind.

I have tried to address these needs this last year, by protecting people with disabilities, non-English speakers, rural and low-income consumers, and many others. I have looked for opportunities for new entrants and smaller players who are seeking to compete in spectrum-based services and in broadcasting.

Today, I would like to focus on securing access to communications opportunities in three key areas. First, we face an urgent need to establish a new framework to shore up universal service so it can continue to fulfill its function of connecting everyone in this country to the latest telecommunications systems, no matter where they live. Second, we need to expand access to the spectrum so that people can maintain those connections in the increasingly untethered, portable world made possible by advances in wireless technologies. Finally, we need to ensure that communities have access to the broadcast airwaves and local broadcasters remain connected to the communities they serve, even as these broadcasters make the transition to the digital era.

II. Universal Service

Just this week, the Commission held an important forum on a development that could revolutionize not only the telephone system as we know it today, but the entire regulatory structure that has grown around it over the last century: Voice over Internet Protocol, or VoIP. As voice traffic is increasingly conveyed in packets, it becomes difficult to distinguish a voice call from e-mail, photos, or video clips sailing over the Internet.

This is one of the most exciting developments in telephony in decades, and promises a new era of competition, new efficiencies, lower prices, and innovative services. But we have to make sure that all consumers can benefit from the promises that VoIP may hold.

At Monday's forum, we kept coming back to the question of what that means for the future of universal service. The Communications Act requires that, through Universal Service, the Commission ensure that all Americans, whoever they are or wherever they live, have access to a rapid and efficient, communications system at reasonable rates. VoIP presents a long-term challenge to the current structure of the Universal Service program.

Yet, the system is already under increasing pressures as it is financed by interstate revenues – a declining source of funding – while new demands are being placed on it by competitive providers, and by those carriers that are trying to invest in upgrading their networks. This is the imminent crisis we must address now.

One area of concern is the growth of new entrants that are receiving universal service funding. Although the amount of funding these carriers receive is not yet that large, it is growing rapidly. The Act provides that only eligible telecommunications carriers, or ETCs, can receive Universal Service support. State commissions have the primary responsibility for designating ETCs, and can designate additional carriers, known as competitive ETCs or CETCs. In some cases, the FCC evaluates requests for these additional carriers because the states do not have the authority or have chosen not to use it.

This ETC process has raised a lot of questions from those who are concerned that many States and the FCC began using universal service to “create” competition in areas that could barely support just one provider, let alone multiple providers. They question if this is what Congress intended.

Reading the Act, it is safe to assume that Congress did intend that multiple carriers would have access to universal service. Otherwise, it would not have given the authority to designate additional carriers for eligibility. But it is not clear that Congress fully contemplated the impact of this growing competition on the ability of the fund to keep up with demand, and eventually to support advanced services. It may come down to a choice Congress never envisioned between financing competition or financing network development that will give people in Rural America access to advanced services like broadband.

But Congress did give some very clear direction we cannot ignore. The law requires that the designation of an additional ETC in a service area, both rural and non-rural, must be consistent

with the public interest. And it established an even higher level of review for those areas served by rural carriers. In those rural areas, the law requires that the authorizing agency shall find that the designation is in the public interest.

a. **ETC Designation Template**

That is why I have been working with my colleagues to establish a better template that appropriately embraces this public interest mandate.

Under this approach, competition alone cannot satisfy the public interest analysis. We must weigh other factors in determining whether the benefits exceed the costs. For example, we must increase oversight to ensure that universal service funds are actually being invested in the network for which funding is received. We should weigh the overall impact on the Universal Service Fund. And we should also assess the value of the provider's service offering. We must consider whether the applicant has made a service quality commitment or will provide essential services in its community. This is particularly important, as providers that gain ETC status may some day serve as their customers' only connection, so they must work well.

I will recommend that the Commission use this analysis whenever it reviews an ETC request.

b. **The Gregg Benchmark Proposal**

In response to these concerns, Joint Board member Billy Jack Gregg has suggested that there are certain areas where financing a competitor is simply not a proper use of universal service funds. He proposed that in areas where the high cost carrier receives more than \$30 per line, we should limit funding to only one ETC. In areas where the funding per line is between \$20-\$30, then we should permit no more than two ETCs. And in areas with less than \$20 per line in funding there would be no limit on the number of ETCs. These benchmarks could be challenged and overridden on a case-by-case basis with specific evidence.

Although this proposal needs further discussion, it has a lot of merit. The High Cost Fund ensures that end users in high cost, mostly rural, areas will have access to quality services at reasonable rates. Universal service funding became necessary in these areas because the costs of service were prohibitively high and without it, many would not have had access to telecommunications service at all. Yet, we now fund more than one carrier in several of these same high cost areas.

Mr. Gregg's proposal may allow us to move back toward the initial concept of the High-Cost Fund. Maybe the public interest is better served by ensuring that we use that fund to build out and advance the network in the highest cost areas rather than funding competitive ventures there.

This proposal would help to limit and better control the growth of the fund.

c. **Primary Lines**

Some are suggesting that a way to control costs is to fund only the primary lines. I believe that this would deny consumers the full support Congress intended. Universal service is not about one connection per household – it encompasses that concept, but is not limited by it. The Low-Income fund ensures at least one connection per household. But the High-Cost Fund embraces the concept of network development and support so that all Americans have access to comparable services at comparable rates, eventually evolving to advanced services.

Basing support solely on primary lines is likely to reduce network investment. It also will have severe implications for consumers who use second lines for fax machines or dial-up access to the Internet. This could have disastrous results for small businesses that operate in rural areas. Their telecommunications costs could easily become too expensive to continue affording services. This could undercut rural economic development and severely damage the economy in Rural America.

So I will not support restricting funding to primary lines only. There are other, better options for addressing the growth of the fund, such as the steps I already have outlined.

d. **Basis of Support**

Another way to better control the size of the fund and be true to our Congressional mandate is to make sure to provide the right level of support. Currently, competitive ETCs receive the same per line amount of funding as the incumbent local exchange carrier or ILECs. If the ILEC is rural, then its universal service funding is based on its own costs. That means the funds received by the competitive carriers are based on the rural ILECs' costs, not their own.

A large number of CETCs are wireless carriers. Wireline and wireless carriers provide different types of services and operate under different rules and regulations. Their cost structures are not the same. To allow a wireless CETC to receive the same amount of funding as the wireline carrier, without any reference to their cost structures, is artificial, not to mention clearly inconsistent with Section 254(e).

Section 254(e) requires that all carriers receiving Universal Service funding use that support "only for the provision, maintenance, and upgrading of facilities and services for which that support is intended." I believe the law compels us to change the basis on which we provide support to competitors.

III. **Managing Spectrum in the Public Interest**

When thinking about the federal role in ensuring access to the latest technologies, the Commission is also charged with managing the nation's spectrum in the public interest. Spectrum is the lifeblood of innovations that provide so many new services that people are demanding.

As some of you may know, I have set out an approach for spectrum policy that I call a "Framework for Innovation." In dealing with the spectrum, I believe the Commission should establish ground rules for issues such as interference and availability. But, to the greatest extent possible, we should let innovation and the marketplace drive the development of spectrum-based services. My goal is to maximize the amount of communications and information that flow over the Nation's airwaves, on earth and through space.

Spectrum is a finite public resource. And in order to improve our country's use of it, we need to improve access to spectrum-based services. We cannot afford to let spectrum lie fallow. It is not a property right, but a contingent right to use a public resource – it should be put to use for the benefit of as many people as possible.

I remain concerned that we need to do more to get spectrum in the hands of people who are ready and willing to use it. That is why I am taking a fresh look at our service and construction rules to ensure that our policies do not undercut the ability of carriers to get access to unused spectrum – whether they are in underserved areas or have developed new technologies. For example, we need to adopt tough but fair construction requirements to ensure that spectrum is truly being put to use. This was the case in our decision earlier this year to shorten the construction period for the MVDDS service from ten years to five.

Improved access to spectrum is also the reason why I pushed for our relatively unique service rules for the 70/80/90 GHz bands, which can provide for fiber-like first and last mile connections. This makes it easier for all licensees to get access to spectrum for Gigabit-speed broadband.

While I continue to support the use of auctions, Section 309(j)(6) of the Act recognizes that the public interest is not always served by adopting a licensing scheme that creates mutual exclusivity. Because of the unique sharing characteristics of the 70/80/90 GHz bands, we had an opportunity here to break that mold, and I am glad we did.

I have repeatedly said the FCC needs to improve access to spectrum by those providers who want to serve rural areas, particularly community-based providers. That is why I pushed for the inclusion of both Economic Areas as well as RSA licenses in our recent Advanced Wireless Services Order. Large license areas can raise auction prices so high that many companies that want to serve smaller areas cannot even afford to make a first bid. I certainly recognize that there is value in offering larger service areas for economies of scale and to facilitate wider area deployments. But the public interest demands that we find a balance in developing a band plan, and I am very pleased we did so in that item.

But I am not sure we are doing enough in this area. We heard last month at our wireless ISP forum that operators across the country need access to more spectrum. More spectrum can drive broadband deployment deeper and farther into rural America. We have to be more creative with a term I will coin "spectrum facilitation." That means stripping away barriers, regulatory or economic, to get spectrum into the hands of operators serving consumers at the most local levels.

For example, I was very pleased to support new guidelines to facilitate a more robust secondary market. We removed significant obstacles and provided a framework for allowing licensees to lease spectrum more easily, while ensuring that the Commission does not lose ultimate control over the spectrum. In doing so, we move closer to achieving our goal of ensuring that all Americans have access to the latest wireless technologies, no matter where they live.

The mobile wireless industry is marked by dynamic competition – due in no small part to the regulatory framework that the Commission initially adopted. In the future, we should continue to apply only those rules that truly benefit the public interest so as to avoid undermining these healthy competitive conditions.

For example, I was very pleased that this summer we took significant steps toward improving access to digital mobile wireless phones by those Americans who use hearing aids. We stepped in where the market did not step up. I can think of no more an appropriate action for a government agency to take.

Similarly, there is no higher priority for us at the Commission than improving E911 service. Every day, we confront issues that can affect millions of dollars; but nothing we do is more important than emergency response services. Unlike a lot of issues that get so much attention, this literally is a matter of life or death.

During the last year, the Commission has really stepped up its work with all stakeholders to accelerate the deployment of wireless E911. Continued success requires the unprecedented cooperation of such a wide range of players – the FCC, wireless carriers, public safety answering points, equipment and technology vendors, local exchange carriers, state commissions, and local governments. We all need to work together to get this done quickly and effectively.

Local number portability, or LNP, is another one of the more difficult issues that we faced over the past several months. It truly seemed that everyone in the telecommunications industry hated some part of it. Yet, LNP is one of those issues where the consumer clearly is the winner.

Clearly, there are a number of lingering concerns with LNP and its implementation. Ultimately, though, I believe both the public interest and the law are on our side. And while the concerns raised by both wireline and wireless carriers are significant, and we need to address them, the benefits to consumers outweigh these concerns.

IV. Media Diversity

As we saw this past year, Americans are very concerned about their media. The airwaves belong to the American people. Nowhere is it more important for us to preserve access to the airwaves as widely as possible. We should encourage a broad range of voices and viewpoints.

In today's radio and television, we are hearing troubling accounts of pay-for-play that is not being fully disclosed to the listening and viewing public. To the extent these allegations are true, this poses a real threat to the public airwaves. Practices like payola may inhibit the local broadcaster from making independent judgments about the needs of listeners in their community.

This can deny local artists and musicians access to their local airwaves. We need to investigate these allegations and make sure our rules address any troubling practices we identify.

It seems that the transition to digital television is finally upon us. As we move into the new era, we should not abandon our public interest model that sustains localism, competition and diversity. Courts have consistently reaffirmed these priorities as central to the health of our democracy.

We should reaffirm the public interest accountability of our broadcast media. Broadcasters enter into a social compact to use the public airwaves. Broadcasters can now magnify their voice digitally from one channel to say five or six. If triopolies are allowed by the courts, digital can expand three channels to up to eighteen. It is time to examine the public interest obligations of broadcasters on those multiple programming streams. Broadcasting is still a public privilege. Broadcasters must serve the public interest and remain accountable to their local communities for all their programming.

The FCC already has undertaken a number of steps to accelerate the digital transition. As we turn to the few remaining pieces, we should establish comprehensive public interest obligations for the digital era. With respect to carriage, broadcasters make the case that multicast carriage will further localism. If so, there should be no reason why they cannot accept a localism requirement on all their digital program streams that gain the privilege of must-carry.

V. Conclusion

As we have seen from the recent media debate, Congress clearly considers the communications industries as far more than makers of widgets. All communications fields involve externalities that are not fully captured in the marketplace. Communications technologies are the way people become informed and participate in society. These technologies bring us up-to-date with our friends and relatives. They educate us with stories, images, and people's creativity. They expand our horizons – from our neighborhoods to our towns and cities, our country, and the world around us. They literally bring the world to our fingertips.

It is the Commission's duty to protect every segment of the public in their access to technologies that convey information necessary to stay well-connected in our society. I look forward to working with all of you, and welcome your ideas on furthering the public interest as we move forward to secure the blessings of modern telecommunications for all of our citizens.

Thank you.

**DISSENTING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

Today's decision designates Virginia Cellular, LLC (Virginia Cellular) as an eligible telecommunications carrier (ETC) in areas served by five rural telephone companies and two non-rural telephone companies in the State of Virginia. The Commission finds the designation of Virginia Cellular as an ETC to be in the public interest and furthers the goals of universal service by "providing greater mobility" and "a choice" of providers in high-cost and rural areas of Virginia.¹ I object to this Order's finding that the goals of universal service are to "provide greater mobility" and "a choice" of providers in rural areas. Rather, I believe the main goals of the universal service program are to ensure that all consumers—including those in high cost areas have access at affordable rates.

During the past two years, I have continued to express my concerns with the Commission's policy of using universal service support as a means of creating "competition" in high cost areas.² As I have stated previously, I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. The Commission's policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in rural areas.

I am troubled by today's decision because the Commission fails to require ETCs to provide the same type and quality of services throughout the same geographic service area as a condition of receiving universal service support. In my view, competitive ETCs seeking universal service support should have the same "carrier of last resort" obligations as incumbent service providers in order to receive universal service support. Adopting the same "carrier of last resort" obligation for all ETCs is fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers.

First, today's decision fails to require CETCs to provide equal access. Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. As I have stated previously, I believe an equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs.³

¹ Order at para. 12.

² Separate Statement of Commissioner Kevin J. Martin, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket (No. 00-256)(rel. October, 11, 2002).

³ Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (rel. July 10, 2002); Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service*, FCC 03-170, CC Docket No. 96-45, (rel. July 14, 2003).

Second, the Commission redefines several rural telephone company service areas where Virginia Cellular's proposed service areas do not cover the entire service area of the incumbent rural telephone company. Given the potential for creamskimming, I do not support this redefining of the service areas of incumbent rural telephone companies. The Commission's decision to permit service area redefinition relies solely on an analysis of population densities of the wire centers that Virginia cellular can and cannot serve to determine whether the effects of creamskimming would occur, but fails to justify the decision based upon any cost data to verify whether Virginia Cellular is serving low-cost, high revenue customers in the rural telephone company's area.

Finally, I am concerned that the Commission's decision on Virginia Cellular's application may prejudice the on-going work of the Federal-State Joint Board regarding the framework for high-cost universal service support. Today's decision provides a template for approving the numerous CETC applications currently pending at the Commission, and I believe may push the Joint Board to take more aggressive steps to slow the growth of the universal service fund such as primary line restrictions and caps on the amount of universal service support available for service providers in rural America.

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2932
of Amended NPCR, Inc., d/b/a)
Nextel Partners, Eden Prairie,)
Minnesota seeking designation as) DENIED
an eligible telecommunications)
carrier that may receive)
universal service support.)
Entered: February 10, 2004

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BY THE COMMISSION:

B A C K G R O U N D

By application filed April 24, 2003, NPCR, d/b/a Nextel Partners (NPCR or Applicant) of Eden Prairie, Minnesota, seeks a designation as an eligible telecommunications carrier (hereinafter, ETC) so that it may receive federal universal service fund support. The application was amended by NPCR on April 28, 2003. Notice of the application was published in The Daily Record, Omaha, Nebraska, on April 30, 2003. No protests or interventions were filed. A hearing on the application was held on July 17, 2003, in the Commission Hearing Room, with appearances as shown above.

The application provides that NPCR seeks designation in several of Qwest's wire centers and in the rural study areas of

Arlington Telephone Company, Blair Telephone Company, Clarks Telephone Company, Diller Telephone Company, Eastern Nebraska Telephone Company, Hamilton Telephone Company, Hartington Telephone Company, Henderson Cooperative, Hooper Telephone, Sometown Telephone Company, Southeast Nebraska Telephone Company and Stanton Telecom, Inc. (See Attachment 1 to Exhibit 3, hereinafter "Attachment 1".)

In support of the application, NPCR presented one witness, Mr. Scott Peabody, director of engineering for NPCR. In addition to the application and amended application, which were offered and received into evidence as Exhibits 3 and 3(a), NPCR offered the pre-filed testimony of Mr. Peabody into the record. In summary of his written testimony, Mr. Peabody stated that NPCR meets all of the requisite criteria for a grant of ETC status.

NPCR is a Delaware corporation with a principal place of business located in Eden Prairie, Minnesota. NPCR was formed in 1998 to build out and operate a digital mobile network in mid-size, small and rural markets using the Nextel Communications brand name. NPCR launched service in Nebraska in 2000. NPCR has obtained licenses from the Federal Communications Commission (FCC) to operate in territories where 53 million people live and work. NPCR built a self-site network covering over 36 million people in 31 states. Nextel Communications and NPCR are separate companies, though they are working together through strategic agreements. The partnership arrangement has allowed NPCR to offer the same services to rural consumers as those offered to urban consumers by Nextel Communications at the same or similar rates.

The application and pre-filed testimony state generally that NPCR is a common carrier and provides the supported services including voice-grade access to the public switched network, local usage, dual tone, a functional equivalent to dual-tone, multi-frequency signaling, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory service, and will, upon designation, provide toll limitation for low-income consumers. NPCR's application also states that NPCR will offer and advertise the availability of supported services within the designated areas.

Mr. Peabody further testified that with an ETC designation, NPCR will be eligible to compete on a level playing field with its competitors. According to Mr. Peabody, in rural areas, public interest is served by bringing consumer choice, innovative services and new technologies to the designated

areas. Specifically, the application avers that the public interest test is or will be met because: 1) NPCR's request covers enough territory to prevent cherry-picking, 2) that NPCR will be able to provide universal service on a more competitively neutral basis, 3) that NPCR will provide supported services to Nebraska consumers with service offerings that will be different from landline offerings, 4) that deployment and wireless network expansion will continue with universal service support, 5) that incumbent local exchange carriers (LECs) will be given the incentive to improve their existing networks in order to remain competitive, 6) that NPCR will provide all of the supported services required by the Commission and will allow NPCR to compete on a level playing field, and 7) to promote the extensive role NPCR plays in the provision of communications services to Nebraska public schools, libraries and local, state and federal government agencies.

O P I N I O N A N D F I N D I N G S

In reviewing an application for eligible telecommunications carrier designation, the Commission looks to Sections 254(b) and 214(e) of the Telecommunications Act of 1996 (the Act), in conjunction with applicable FCC rules and regulations.

Section 254(b) of the Act defines universal service by outlining six principles:

1. Quality services should be available at just, reasonable and affordable rates.
2. Access to advanced services should be provided in all regions of the nation.
3. Consumers in all regions of the nation should have access to services (including advanced services) at rates that are reasonably comparable to those in urban areas.
4. All telecommunications providers should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
5. There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
6. Schools and libraries should have access to advanced services.

In 1997, the FCC released its Universal Service Report and Order in CC Docket 96-45, FCC 97-157 (Universal Service Order), which implemented several sections of the Act. The FCC's Universal Service Order provides that only eligible

telecommunications carriers designated by a state commission shall receive federal universal service support. Section 214(e) of the Act delegates to the states the ability to designate a common carrier as an ETC for a service area designated by the state commission. A service area is the geographic area established for the purpose of determining the universal service obligation and support eligibility of the carrier. The FCC also provided that "competitive neutrality" should be an added universal service principle.

Section 214(e)(1) provides that an ETC Applicant shall:

Throughout the service area for which such designation is received—

- (A) offer the services that are supported by federal universal service support mechanisms under section 254 . . . ; and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

The FCC's supported services are found in 47 C.F.R. § 54.101(a) and are as follows:

- a. voice grade access to the public switched network;
- b. local usage;
- c. dual tone multi-frequency signaling or its functional equivalent;
- d. single-party service or its functional equivalent;
- e. access to emergency services;
- f. access to operator services;
- g. access to interexchange services;
- h. access to directory assistance; and
- i. toll limitation for qualifying low-income consumers.

Upon review of the application and testimony presented, the Commission finds that Applicant offered only generalized statements that it has the ability to provide the supported services listed in a-i, above.

Federal law further provides that:

In the area served by a rural telephone company "service area" means such company's "study area" unless and until the Commission and the States after taking into account recommendations of a

Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Section 214(e)(2) generally provides,

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. **Upon request and consistent with the public interest, convenience, and necessity,** the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate **more than one** common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). (Emphasis Added).

In an area served by rural carriers Section 214(e)(2) further requires ETC Applicants to demonstrate to the state Commission that the designation of **an additional** ETC is in the public interest. (Emphasis Added).

The Commission previously found in its Western Wireless Order that it was not necessary for an ETC to be offering the supported services and advertising the availability and charges of the services *prior to* ETC designation. However, in that ruling the Commission also found that Western Wireless had presented sufficient and credible evidence that it was willing and capable of meeting the requirements of Section 214(e)(2) and had every intention of carrying out its plan to provide the supported telecommunications services *throughout the designated area*. Western Wireless provided detailed evidence as to how its basic universal service offering (BUS) was to be provided over a wireless access unit and antenna combination that was capable of reaching even the most insular rural areas of the state.

Unlike the case in Western Wireless, the evidence presented in this case, does not convince the Commission that the Applicant is likewise capable of meeting the requirements of Section 214(e)(2). Nor does the evidence indicate to the Commission that the Applicant is willing to meet the basic requirements of Section 214 (e)(2).

The Commission further finds that the Applicant has not presented a clear plan and timetable for providing the supported services throughout the designated territory. Upon questioning, the Applicant stated that it would be difficult to follow any parameters set by the Commission in relation to the provisioning of service. (Transcript at 53:8-20). Applicant claims the Commission does not have the ability to set any reasonable parameters to ensure that the requirements of Section 214(e)(2) are fulfilled. This testimony creates concerns in relation to NPCR's willingness to serve the entirety of the study areas for which NPCR has requested designation.

In sum, the Commission finds that NPCR has not provided sufficient evidence that it is willing and capable of meeting the core eligibility requirements of section 214(e). NPCR failed to provide sufficient evidence that it can provide the supported services listed in 47 C.F.R. § 54.101 et seq. and failed to demonstrate to the Commission that it is willing to serve the entire designated area.

We also interpret the language in Section 214(e)(2) to mean that the Commission is only obligated to designate more than one ETC in a given territory served by non-rural carriers. Specifically, Section 214 (e)(2) reads that upon a finding that it is consistent with public interest and necessity, the Commission **shall** designate **more than one** ETC in an area served by a non-rural company. The plain construction of the phrase "**more than one**" in the Commission's opinion means the designation of a second ETC is required upon a finding that said ETC Applicant has satisfied the requirements of the Act and FCC regulations. However, the Commission finds that the literal reading of Section 214(e)(2) stops there. The Commission believes that the designation of a third or fourth ETC in a given territory served by a non-rural carrier is purely discretionary. In light of this interpretation, the Commission finds that it has already satisfied the requirement in Section 214(e)(2) by designating more than one ETC in all of the proposed non-rural territory described by NPCR in Attachment 1 to its application.

In addition, with respect to the request to be designated as an additional ETC in the rural areas outlined in Attachment 1, the Commission finds that the Applicant has not sufficiently proven that designation is in the public interest.

To demonstrate public interest, the Applicant's witness testified that the addition of it as a competitor and the introduction of new technologies in the rural market satisfy the public interest test. To further support its argument that a

designation is in the public interest, the Applicant states that the Commission should review its application against this Commission's Western Wireless Order. If we would do so, NPCR's application would fall short of the standards set by the Commission. First, as stated above, we do not believe Applicant has shown that it is willing to provide the supported services throughout the designated territory. We do not believe that Applicant's proposed service territory is large enough to properly address our concerns relating to "cherry picking." Moreover, there is no indication that a designation in the present case would lead to "increased" competition. Finally, while the Commission did provide an analysis of public interest in the Western Wireless case, the Commission believes that a public interest analysis requires a case-specific finding. A review of public interest requires the Commission to carefully balance the public benefits and public harms of approving an ETC application. This requires the Commission to look at the environment at the time designation is sought. In the present case, Applicant is already providing the wireless service throughout its licensed territory in Nebraska. Applicant offered no evidence that it will, in fact, extend its service or provide better service than presently being offered. Instead, Applicant has made generalized statements with respect to public interest, which even if true, would not distinguish itself from any other wireline or wireless provider.

Nonetheless, we will address NPCR's claims individually. First, NPCR claims that its proposed territory is large enough to prevent cherry-picking. We do not believe that it is. NPCR does not give any other information to back this claim with the exception of a map, which outlines its licensed territory and signal strength. (See Exhibit 8). Exhibit 8 demonstrates that large regions of territory served by Eastern Nebraska Telephone and Stanton will go unserved while the higher populated areas will continue to receive NPCR's service. In response to Commission questions, Applicant could not give the Commission a time frame in which to expect all proposed designated areas to be served. Further, unlike Western Wireless, NPCR's application covers only a part of the eastern portion of the state, leaving the western half of the state unserved. We do not think the proposed territory is large enough to prevent cherry-picking.

Next, NPCR states that with federal support, it will be able to provide universal service on a more competitively neutral basis. Competitive neutrality was added by the FCC to the Section 254 list of universal service principles. Contrary to the position of NPCR, we find that the goal of competitive neutrality is not automatically met with the designation of an additional ETC in the areas served by rural companies. As NPCR

is already successfully providing a wireless service in that area, there is no reason to believe that NPCR needs a subsidy to level the competitive playing field. Federal subsidies flowing to NPCR may result in just the opposite, a windfall to Applicant, particularly when this Applicant is unwilling to submit to some basic state-imposed requirements such as equal access, the filing of tariffs and service quality benchmarks.

Third, NPCR states that it will provide supported services to Nebraska consumers with service offerings that will be different from landline offerings. NPCR is providing service in the proposed territory now. There was no evidence produced which would indicate that this ETC designation would produce better or more valuable services than those currently available to rural consumers. Although NPCR claims that it will expand deployment of its wireless network as it receives universal service support, it brought forth no specific evidence of where and when it plans to do so. In fact, the NPCR witness stated in the hearing that NPCR could not give any timetable for any such expansion.

Further, NPCR claims that incumbent local exchange carriers (ILECs) will be given the incentive to improve their existing networks in order to remain competitive. We do not believe this to be true. Because NPCR does not directly compete with the service of the rural incumbent carrier, there would be no incentive for the incumbent LECs to make any improvements. Moreover, we note that current state universal service mechanisms already give incumbent LECs incentives to improve their existing networks.

Finally, NPCR states that public interest is met because designation will promote the extensive role NPCR plays in the provision of communications services to Nebraska public schools, libraries and local, state and federal government agencies. NPCR offered no specific evidence of how this would come about or where universal service support would be invested.

In today's marketplace, we find that the question to be answered is whether subsidizing NPCR's service offering in the proposed Nebraska rural territories is good public policy. Looking back to its 2000 Western Wireless decision, the Commission finds that perhaps its public interest analysis wasn't rigorous enough and tailored enough to the goals of universal service. To be sure, the Commission was more concerned at that time with bringing competition to the rural areas of Nebraska. Since then, the environment and the Commission's focus has changed. The Commission believes that universal service is not a vehicle by which competition should

be artificially created. The purpose of universal service is not to promote competition. Rather, the purpose of universal service is found in section 254 of the Act. To this end, the Commission's role is to ensure that the universal service principles continue to be served in a competitive environment.

As we noted in our Western Wireless Order,

The mere provision of additional competition by the entry of another ETC into a rural area is not sufficient in and of itself as a demonstration of the public interest. We accept the argument made by the Intervenor that, "Competition is not tantamount to public interest." If that were the case, no public interest test review would be necessary since any and all new competitors would represent additional benefit to the public.

In light of the current environment, we find that the real issue to consider is whether Applicant's competitive efforts in the proposed territory should be subsidized by payments from the federal USF. We find they should not. As the Applicant's case demonstrates, no federal subsidy is necessary to bring Applicant's service to the rural areas. Applicant is already serving the rural areas and bringing new technologies to these areas without the assistance of a federal subsidy. We further believe an ETC designation would not place Applicant on a level playing field with the incumbent carriers. Rather, a grant of the application would grant to the Applicant distinct advantages over the incumbent carriers, jeopardizing their ability to serve all of their subscribers adequately and jeopardizing the principles set forth in section 254. In addition, Applicant is virtually unregulated in terms of service quality, and Applicant has no equal access obligations that the incumbent carriers have. Unlike Western Wireless, Applicant was unwilling to submit its service to some service quality benchmarks, file tariffs, or consent to the Commission's general jurisdiction over consumer complaints. Consumers in the proposed territory are already receiving telecommunications services from the Applicant without additional costs. If this application is granted, consumers would be required to bear the additional costs necessary to subsidize the service provided by the Applicant. Accordingly, we find that the public costs in granting an ETC designation in the territory served by the rural carriers outweighs any supposed benefits offered by Applicant.

In sum, we find NPCR's application for ETC designation in the proposed territories described in Attachment 1 to the

application served by non-rural carriers and by rural carriers should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of NPCR d/b/a Nextel Partners should be and it is denied.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of February, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

Commissioners Anne Boyle and Lowell Johnson dissenting:

We respectfully dissent. NPCR, d/b/a Nextel Partners (NPCR) filed this application seeking eligible telecommunications carrier (ETC) designation in areas served by Qwest and a number of rural independent companies. The Commission duly published notice of the application and placed all carriers on notice of NPCR's intentions. Even though there has been great controversy at the state and national level regarding designation of ETC status, no party opposed or intervened. It is well established that the "failure to timely file a protest shall be construed as a waiver of opposition and participation in the proceeding." See Neb. Admin. Code Title 291, Chapter 1, Section 014.01.

Nevertheless, in order to ensure that NPCR's offering satisfied all criteria outlined in the federal Telecommunications Act of 1996 (the Act), the Nebraska Public Service Commission (NPSC) chose to hold a hearing. NPCR, through its witness, offered into the record evidence on each element of proof necessary. The Commission accepted the evidence and did not dispute NPCR's claim that they had met all criteria required by the Act.

We are very concerned about the Federal Universal Service Fund (USF) from which ETCs draw funding. As the FCC has recognized, designation of additional ETCs draws more from the USF, which is suffering from ever-increasing demands and diminishing sources of revenue. Some rural associations have criticized states for cursorily granting ETC designation. However, we do not believe that the states should be to blame as the term "public interest" has been an ill-defined and ever changing test. At the time of the hearing on this application, the FCC hadn't offered clear guidelines to states to determine public interest. It was only recently, that the FCC, by Memorandum Opinion and Order involving Virginia Cellular, Inc., gave states a specific framework for making their public interest judgments.¹ However, the FCC explained that its public interest analysis may again be altered due to the Joint Board's deliberations and any other public interest framework that the FCC may adopt.

In reviewing this application, we question whether designation of ETC status in rural areas where competition may harm existing carriers of last resort. At the same time we consider whether customers are well served without the benefit of choice. A competitive ETC does not draw until it begins to provide service. Therefore, the only tests states can consider

are the objective criteria set by the Act and the public interest.

We are hopeful that the FCC will give states more authority to look to a number of relevant factors prior to designation. If states are to consider the size of the fund, the FCC should compute a formula to determine the amount each state should receive. A federal/state partnership would allow each state to administer their portion of the fund. Currently carriers simply certify they are properly using provided funds. State administration would allow closer scrutiny to ensure proper use of funds. Currently, states have no control over the size or disbursements from the federal USF.

Based on the record in this case, it is our opinion that the NPSC is legally unable to make a decision to deny an ETC application simply because of the aforementioned concerns. With no protests, no dispute that necessary criteria had not been met and no provision in the Act for state discretion to deny an application other than those previously mentioned, the application should be granted.

Anne C. Boyle

Lowell C. Johnson

MEMORANDUM

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Director
Utilities Division

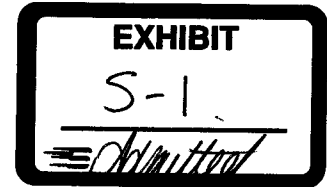
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LEGAL DIV.
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DATE: October 29, 2003



RE: STAFF REPORT FOR ALLTEL COMMUNICATIONS, INC.'S APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER PURSUANT TO SECTION 214(e)(2) OF THE COMMUNICATIONS ACT OF 1934 (DOCKET NO. T-03887A-03-0316)

Attached is the Staff Report for ALLTEL Communications, Inc.'s Application for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Communications Act of 1934. Staff recommends approval of the Application. An intervenor in this docket requested a hearing. Staff is not opposed to holding a hearing in this matter.

EGJ:MGK:hml

Originator: Marta Kalleberg

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Docket No. T-03887A-03-0316

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

ALLTEL COMMUNICATIONS, INC.

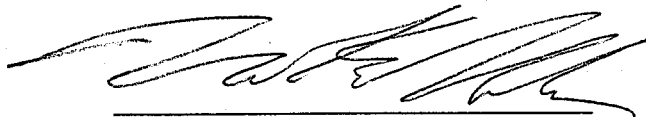
DOCKET NO. T-03887A-03-0316

**APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER PURSUANT TO SECTION 214(e)(2) OF THE COMMUNICATIONS ACT OF
1934**


OCTOBER 2003

STAFF ACKNOWLEDGMENT

The Staff Report for ALLTEL Communications, Inc. (Docket No. T-03887A-03-0316) was the responsibility of the Staff members listed below. Marta Kalleberg was responsible for the review and analysis of the Company's Application. Richard Boyles was responsible for the technical analysis.



Marta Kalleberg
Public Utilities Analyst



Richard Boyles
Utilities Engineer—Telecommunications

**EXECUTIVE SUMMARY
ALLTEL COMMUNICATIONS, INC.
DOCKET NO. T-03887A-03-0316**

ALLTEL Communications, Inc. ("ALLTEL") is a Commercial Mobile Radio Service ("CMRS") provider. ALLTEL is licensed to provide services in the Phoenix MSA, Tucson MSA, Arizona RSA 2 (which includes Coconino and Yavapai counties), and Arizona RSA 5 (which includes Gila and Pinal counties). Both non-rural and rural ILECs provide wireline service within these areas.

ALLTEL is seeking designation as an Eligible Telecommunications Carrier ("ETC") for that portion of its licensed service area in which there is a certificated Incumbent Local Exchange Carrier ("ILEC") or in which an ILEC has been authorized to provide service. Designation as an ETC will enable ALLTEL to apply for and receive Federal Universal Service Fund ("FUSF") support. The Federal Communications Commission ("FCC") has set forth criteria which a carrier must meet in order to be designated as an ETC: 1) provide nine core telecommunications services using its own facilities or a combination of its own facilities and resale of another carrier's services, 2) advertise its service offerings, and 3) offer Lifeline and Link Up service to all qualifying low-income consumers within its service area. In the areas served by rural ILECs, a finding that it is in the public interest to designate the carrier as an ETC is also required. ALLTEL states that it meets these criteria for designation as an ETC.

Staff concludes that ALLTEL has satisfied the criteria for being designated as an ETC in the areas served by non-rural and rural ILECs in the State of Arizona for which it seeks designation. Staff recommends that ALLTEL's Application be approved with conditions.

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I. Procedural History

On May 19, 2003, ALLTEL Communications, Inc. ("ALLTEL" or "the Company") filed an Application requesting designation as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201.

In its Application, ALLTEL is licensed to provide wireless service in the following areas: Phoenix Metropolitan Statistical Area ("MSA"), Tucson MSA, Arizona Rural Service Area ("RSA") 2, and Arizona RSA 5. ALLTEL requests that the Arizona Corporation Commission ("Commission") designate it as an ETC for that portion of its licensed service area in which an ILEC is also certificated or authorized to provide service.

On June 16, 2003, Table Top Telephone Company, Inc. ("Table Top") filed a Motion to Intervene.

On June 18, 2003, a Procedural Order was issued which set a date for a Procedural Conference of June 25, 2003.

On June 25, 2003, a Procedural Conference was held at which ALLTEL, Table Top, and Commission Staff appeared. Table Top's Motion to Intervene was granted at the Procedural Conference.

On July 11, 2003, a Procedural Order was issued which set a Staff Report filing deadline of October 1, 2003.

On July 24, 2003, Arizona Telephone Company ("ATC") filed a Motion to Intervene. On August 11, 2003, the Arizona Local Exchange Carriers Association ("ALECA") filed a Motion to Intervene.

On August 7, 2003, the Motion to Intervene filed by ATC was granted.

On August 21, 2003, the Motion to Intervene filed by ALECA was granted.

On August 22, 2003, Table Top filed Initial Comments on ALLTEL's Application.

On September 10, 2003, ALLTEL and Commission Staff filed a Stipulation for Extension of Time. This Stipulation stated that the parties agreed to extend the deadline for the Staff Report to October 29, 2003.

On September 22, 2003, a Procedural Order was issued which ordered that the Staff Report be filed by October 29, 2003.

On October 14, 2003, ALECA filed Comments on ALLTEL's Application and requested that a hearing be held in this matter.

II. Background

ALLTEL is a telecommunications corporation as defined in A.R.S. § 40-201. ALLTEL is a Commercial Mobile Radio Service ("CMRS") provider as defined in 47 C.F.R. 20.3¹ and the Company provides telecommunications services as defined in 47 U.S.C. § 157(45). The Company's Federal Communications Commission ("FCC") licensed wireless service area includes the entirety of the following counties: Maricopa, Pinal, Gila, Pima, Yavapai, and Coconino. In other words, ALLTEL is licensed to provide services in the Phoenix MSA, Tucson MSA, Arizona RSA 2 (which includes Coconino and Yavapai counties), and Arizona RSA 5 (which includes Gila and Pinal counties).

ALLTEL is seeking ETC designation in the portions of its licensed service area in which there is a certificated ILEC. This includes areas served by non-rural and rural ILECs within the State of Arizona. Designation as an ETC will enable ALLTEL to apply for and receive monies from the Federal Universal Service Fund ("FUSF"). While ETC designation is necessary prior to receiving support from the Arizona Universal Service Fund ("AUSF"), ALLTEL's present application is not requesting that it be considered to receive AUSF at this time. The Arizona Administrative Code ("A.A.C.") sets forth the Commission's rules regarding AUSF. ALLTEL would be required to submit a separate Application and comply with additional requirements in order to receive AUSF.

III. Requirements for Designation as an ETC

Designation as an ETC entitles a carrier to be eligible to receive federal universal service funds. The requirements for designation of ETCs are specified by 47 U.S.C. § 214(e)(1). It states that "A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the corresponding charges using media of general distribution."

The Telecommunications Act of 1996 ("1996 Act") defines "service area" as a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural ILEC, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.²

¹ Commercial Mobile Radio Service is defined as a "mobile service that is: (a)(1) provided for profit, i.e. with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such class of eligible users as to be effectively available to a substantial portion of the public."

² 47 U.S.C. § 214(e)(5).

47 C.F.R. § 54.101, sets forth the services that a carrier must offer in order to receive Federal universal service fund support. The services include:

- (1) Voice Grade Access to the Public Switched Network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For purposes of this Part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz;
- (2) Local usage. "Local usage" means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;
- (3) Dual Tone Multi-Frequency Signaling of its Functional Equivalent. "Dual tone multi-frequency" ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;
- (4) Single-party service or its functional equivalent. "Single-party service" is a telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
- (5) Access to Emergency Services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911", to call emergency services through a Public Service Access Point ("PSAP") operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems;
- (6) Access to Operator Services. "Access to operator services" is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

- (7) Access to Interexchange Service. "Access to interexchange-service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to Directory Assistance. "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll Limitation for Qualifying Low-Income Consumers. Toll limitation for qualifying low-income consumers is described in Subpart E of this part.

In order to be designated as an ETC, a carrier must also offer Lifeline and Link Up service to all qualifying low-income consumers within its service area.³ Lifeline service provides basic telephone service with discounts on monthly telecommunications charges. Link Up service provides financial assistance to help cover the installation charges for telecommunications service.

One additional requirement exists in making an ETC determination in areas served by a rural ILEC. Under 47 U.S.C. § 214(e)(2), a state commission may grant ETC status to a company that provides service in an area served by a rural ILEC only if the state commission finds that doing so is in the public interest.

IV. ALLTEL's Compliance with the Requirements for ETC Designation

A. Offering the Services Designated for Support

ALLTEL states that it currently offers the services designated for support by the Federal universal support mechanisms under 47 U.S.C. § 51.101(a) which include the following:

- 1. Voice grade access to the public switched network.
- 2. Local usage.
- 3. Dual tone, multi-frequency signaling or its functional equivalent.
- 4. Single party service or its functional equivalent.
- 5. Access to emergency services.
- 6. Access to operator services.
- 7. Access to interexchange service.
- 8. Access to directory service.
- 9. Toll limitation for qualifying low-income consumers.

³ 47 C.F.R. §§ 54.405 and 54.411(a).

ALLTEL intends to provide digital and analog wireless service in the proposed ETC coverage area to subscribers taking service under its plans.

ALLTEL states that it will offer the supported services (including the nine services listed above and Lifeline and Link Up services) using its own facilities. Therefore, Staff recommends that the Commission find that ALLTEL meets this requirement for ETC designation in the portions of its ETC requested area that are served by non-rural and rural ILECs.

In its First Report and Order in CC Docket 96-45, the FCC found that any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under 47 U.S.C. § 214(e)(1). The FCC found that "wholesale exclusion of a class of carriers by the Commission would be inconsistent with the language of the statute and the pro-competitive goals of the 1996 Act."⁴ The FCC has reaffirmed these findings in both its Seventh Report and Order and in its Ninth Report and Order and Eighteenth Order on Reconsideration on Universal Service, CC Docket No. 96-45, finding that "federal universal service high-cost support should be made available to all eligible telecommunications carriers that provide the supported services, including wireless carriers, regardless of the technology used."

B. Advertising of Supported Services

ALLTEL states that it will advertise the availability of its supported services (which include all nine services listed above and Lifeline and Link Up services) and the corresponding charges using media of general distribution as required by 47 U.S.C. § 214(e)(1)(B). ALLTEL states that the methods of advertising it currently utilizes include television, newspaper, radio, and direct mailings.⁵ ALLTEL also states that it anticipates beginning Spanish advertising campaigns in the near future. ALLTEL submitted examples of prior relevant advertisements to Staff.

The FCC has ruled on wireless ETC applications from states in which the state lacked jurisdiction to review these applications. In these rulings, the FCC has stated that ETC designation requires that a carrier advertise its supported services once it has been designated as an ETC, but that a carrier is not required to advertise its supported services prior to ETC designation.⁶ ALLTEL indicates that it currently advertises its services through media of general distribution. ALLTEL also states that it will continue to do so following ETC designation.

Based upon the above, Staff concludes that ALLTEL will advertise the availability of its supported services and charges using media of general distribution as required by 47 U.S.C. § 214(e)(1)(B). Staff recommends that the Commission find that ALLTEL also meets this ETC

⁴ *Id.*, at para. 145.

⁵ ALLTEL's Response to MK 1-36 of Staff's First Set of Data Requests.

⁶ *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, Rlsd. November 27, 2002, para. 21.

designation criteria in the portions of its ETC requested area that are served by non-rural and rural ILECs.

C. Universal Service Support Area

The Commission must establish a geographic area for the purpose of determining universal service obligations and support mechanisms for each designated ETC. *See* 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(b).

For wire centers served by non-rural ILECs, no analysis with respect to redefinition of a LEC service area is required. In areas served by a rural ILEC, however, 47 U.S.C. § 214(e)(5) provides that the "service area" is the LEC study area. Where the requested service area differs from the LEC study area, the carrier must obtain approval of the modified service area definition from the Federal-State Joint Board for Universal Service. *Id.*

Exhibit A contains a listing of the wire centers that exist within the requested ETC service area that are served by a non-rural ILEC, Qwest. Qwest is the only non-rural ILEC in the State of Arizona. ALLTEL listed in its Application all of the non-rural (i.e., Qwest) wire centers which it serves and for which it is seeking ETC designation. ALLTEL stated in its Application that of all the Qwest wire centers it serves, it partially serves one Qwest wire center and that it is only seeking designation in the portion of that wire center which it serves. For these non-rural wire centers, however, no analysis with respect to redefinition of an ILEC service area is required.

Therefore, all requirements for ETC designation with respect to ALLTEL's ETC requested area that is served by a non-rural ILEC have been fulfilled. According to 47 U.S.C. § 251(e)(2), the Commission must designate multiple ETCs in areas served by non-rural ILECs if the carriers requesting ETC designation meet the federal requirements. Staff recommends that ALLTEL's Application with respect to the ETC requested area that is served by a non-rural ILEC be approved.

Exhibit B contains a listing of the wire centers that exist within the requested ETC service area that are served by a rural ILEC and the names of rural ILECs for which ALLTEL serves all of their wire centers. ALLTEL is seeking ETC designation in the areas served by the following rural ILECs: Accipiter Communications, Inc. ("Accipiter"); Gila River Telecomm Inc. ("Gila River"); San Carlos Apache Telecommunications ("San Carlos"); Tohono O'odham Utility Authority ("TOUA"); ATC; CenturyTel of the Southwest, Inc. ("CenturyTel"); Citizens Telecommunications Company of the White Mountains d/b/a Frontier Communications of the White Mountains ("Citizens"); Midvale Telephone Exchange, Inc. ("Midvale"); Navajo Communications Company ("Navajo"); South Central Utah Telephone Association ("South Central"); and Table Top. For the wire centers of Accipiter, Gila River, San Carlos, and the TOUA, no service area redefinition would be required, should the Commission grant ALLTEL's Application, since ALLTEL serves the entire study area. For the wire centers of ATC, CenturyTel, Citizens, Midvale, Navajo, South Central, and Table Top, ALLTEL is requesting redefinition since ALLTEL is not licensed to serve the entire study areas of these companies.

For certain wire centers within these rural ILECs' study areas, ALLTEL is requesting that it receive ETC designation for partial wire centers since ALLTEL is only licensed to provide wireless service to portions of these wire centers.

In determining whether to define the service area of ALLTEL differently than the ILEC study area, the Commission must consider three factors.⁷

First, the Commission must consider whether ALLTEL is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.⁸ ALLTEL stated in its Application that it has chosen its ETC requested area based on its licensed service area and not on where the lowest cost exchanges exist.

Second, the Commission must consider the rural carrier's special status under the 1996 Act.⁹ ALLTEL states that no action in this proceeding will affect or prejudice any future action the Commission may take with respect to the rural ILECs' status as rural telephone companies.

Third, the Commission must consider the administrative burden a rural ILEC could face as a result of the proposed service area designation.¹⁰ ALLTEL states that redefining rural ILEC study areas will not impact the way rural ILECs calculate their costs. Therefore, ALLTEL believes that no additional administrative burden will be incurred by the rural ILECs in this case.

ALLTEL seeks ETC designation in both high and low-cost areas within the rural ILECs' study areas. ALLTEL's ETC requested area is based on the area in which it is licensed to serve. Therefore, Staff has no concerns that ALLTEL is trying to "cream-skim" lower cost customers. In addition, Staff has not received information from rural ILECs that indicates that they would be administratively burdened if ALLTEL was designated as an ETC.

Staff recommends that ALLTEL's request for redefinition of the study areas of ATC, CenturyTel, Citizens, Midvale, Navajo, South Central, and Table Top be granted.

⁷ Federal-State Joint Board on Universal Service, Recommended Decision, Docket 96-45, 12 FCC Rcd 87 (1996).

⁸ Federal-State Joint Board on Universal Service, Recommended Decision, Docket 96-45, 12 FCC Rcd 87 (1996) at para. 172.

⁹ Federal-State Joint Board on Universal Service, Recommended Decision, Docket 96-45, 12 FCC Rcd 87 (1996) at para. 173.

¹⁰ Federal-State Joint Board on Universal Service, Recommended Decision, Docket 96-45, 12 FCC Rcd 87 (1996) at para. 174.

D. Intervenor Comments and Public Interest Determination for Areas Served by Rural ILECs

1. Intervenor Comments

a. Table Top

On August 22, 2003, Table Top filed Initial Comments on ALLTEL's Application. Table Top asserts that ALLTEL's Application should be denied because it is not in the public interest. Table Top gives four reasons behind its assertion. First, ALLTEL does not provide factual support that there would be a public interest benefit if the Application was granted. Second, benefits must exceed costs if more than one ETC in a rural area is designated. Third, the Federal-State Joint Board on Universal Service is currently reviewing issues related to competitive ETC designation. Table Top proposes that the Commission await the Joint Board's recommendations and the FCC ruling on this issue before issuing a decision on ALLTEL's Application. Fourth, approval of the Application would lead to increased pressure on the FUSF and could impact the Arizona Universal Service Fund ("AUSF").

Table Top states that although ALLTEL's Application refers to the Smith Bagley, Inc. ("Smith Bagley") ETC applications which were approved by the Commission in Decision Nos. 63269, 63421, and 65054, those applications contained certain tribal issues which are not present in ALLTEL's Application.

Table Top states that there is no assurance by ALLTEL that it will invest in Arizona infrastructure with the FUSF monies that it receives. Table Top also is concerned that ALLTEL does not seem to offer the Commission an opportunity to review its use of FUSF support.

Table Top states that the FCC has recognized the differences between rural and non-rural ILECs. Rural ILECs have a greater reliance on access charges and universal service support. Table Top states that part of the intent of the Telecommunications Act of 1996 ("1996 Act") was to ensure that universal service is protected in rural areas before designating a second ETC in these areas. The benefit of increased competition cannot be the primary reason for designating another ETC in rural areas.

b. ALECA

On October 14, 2003, ALECA filed Comments on ALLTEL's Application. ALECA is composed of rural ILECs, including each of the seven rural ILECs in whose territory ALLTEL seeks redefinition of the service areas. ALECA asserts that ALLTEL's Application should be denied because it is contrary to the public interest.

ALECA mentions that ALLTEL has not quantified its claims that rural customers will benefit from its ETC designation. ALECA asks whether the products and advanced services that ALLTEL states it will provide are not already available from rural ILECs. Contrary to ALLTEL's claim that rural ILECs have no incentive to innovate and introduce new offerings

(including advanced services), ALECA states that rural ILECs have these incentives now due to wireless competition and that they have introduced digital switching, DSL-capable facilities, and other modern features.

ALECA states that wireless carriers do not compensate rural ILECs when they terminate calls on the local networks of rural ILECs. However, the rural ILECs are burdened with the maintenance and construction of these local networks. ALLTEL has also not provided information on the infrastructure it will construct. ALECA believes that if ALLTEL is able to receive FUSF support without a requirement that this money be used to construct infrastructure in rural Arizona, then the limited FUSF resources will be siphoned away from their intended purposes.

ALECA mentions the public interest criteria that the Commission utilized in approving Smith Bagley's request for ETC designation in Decision No. 63269. The Commission stated that approval of Smith Bagley's ETC Application would confer benefits to Native Americans with low telephone subscribership. Smith Bagley would serve areas in which no wireline carrier is even available for residents.

ALECA states that ALLTEL has not shown that its Application is in the public interest considering the same public interest factors that were reviewed in the Smith Bagley Decision. ALLTEL claims it will serve underserved areas, but it does not indicate where these areas are. There are multiple wireless carriers serving the ETC requested area in ALLTEL's Application and ALLTEL is currently serving these areas. ALECA asks what additional benefits would be received by customers if ALLTEL's Application were granted that these customers do not already receive. ALECA believes that the Commission must address the fundamental question of what criteria it will assess in making ETC determinations for wireless carriers.

ALECA states that FUSF support is indispensable for rural ILECs that serve high-cost areas. ALECA details the conditions under which rural ILECs receive FUSF. First these ILECs must construct infrastructure. Then, after approximately 18 months, these rural ILECs will receive FUSF support to cover their infrastructure investments. However, a carrier like ALLTEL will receive FUSF support before showing that it has made any infrastructure investments. By approving ETC designation for wireless carriers without thorough deliberation, state commissions have threatened the sustainability of the FUSF. ALECA states that if FUSF support is lessened, then Arizona would be required to utilize AUSF to compensate for the shortfall.

Finally, ALECA agrees with Table Top that the Commission should stay a decision on ALLTEL's Application until the issues pending before the Federal-State Joint Board on Universal Service are resolved.

2. Public Interest Determination

As mentioned previously, one additional criteria, public interest, is required in making an ETC determination in areas served by a rural ILEC. Under 47 U.S.C. § 214(e)(2), a state

commission may grant ETC status to a company that provides service in an area served by a rural ILEC only if the state commission finds that doing so is in the public interest.

ALLTEL provides customers with mobility, versus the fixed location of wireline service, and a variety of local and long distance options. ALLTEL's wireless plans offer expanded local coverage areas far beyond that offered by wireline carriers. All ALLTEL plans offer long distance as well. ALLTEL also offers advanced services, such as internet service and text messaging. In ALLTEL's Application, it commits to using all federal high-cost support for the maintenance, construction, and upgrading of facilities serving areas in which a rural ILEC is certified. In its response to Staff's First Set of Data Requests, ALLTEL confirms that it will use federal universal service support in accordance with 47 U.S.C. § 214(e)(1).¹¹

ALLTEL's current coverage area (i.e., area in which it is capable of serving customers) is less than its entire licensed service area.¹² While ALLTEL's Application does not solely encompass tribal areas, as did Smith Bagley's initial ETC application, ALLTEL's requested ETC service area does include some tribal lands. Navajo, San Carlos Apache, and Tohono O'Odham tribes are within ALLTEL's requested ETC service area. ALLTEL states that ETC designation would provide it with the FUSF support to enable it to expand its coverage area within the ETC requested area. ALLTEL also states that FUSF support will enable it to improve its services.¹³ To the extent that customers are underserved and wireline line extension charges are applicable, ALLTEL states that it seeks to provide these customers with an alternative to wireline service which may be unaffordable.¹⁴ Where the wireline carrier has not constructed facilities, the availability of a robust wireless network provides options to residents that might not otherwise be available. ALLTEL's eligibility to receive FUSF support may allow it to expand its network into areas where it would otherwise be uneconomical to do so.

Wireless carriers receive the same level of FUSF support as the wireline ILECs in whose service territory they are designated as ETCs. Staff would note that, under current FCC methodology for providing high-cost support, wireline carriers, like Table Top, do not lose support when customers select a wireless ETC as their service provider. This is true regardless of whether the customer chooses wireless service as a complement to its wireline service or as a substitute for wireline service. Rural ILECs receive support based upon their network costs and not "per line" support. Thus when a customer leaves the wireline carrier's network, the rural ILEC re-averages its network costs across the remaining customer base in each subsequent reporting period so as to recover its full measure of high-cost support. This was discussed in the FCC's Fourteenth Report and Order.¹⁵

¹¹ ALLTEL's Response to MK 1-42 of Staff's First Set of Data Requests.

¹² ALLTEL's Response to MK 1-4 of Staff's First Set of Data Requests.

¹³ ALLTEL's Response to MK 1-19 of Staff's First Set of Data Requests.

¹⁴ ALLTEL's Response to MK 1-41 of Staff's First Set of Data Requests.

¹⁵ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11296-97 (2001) ("Fourteenth Report and Order").

Staff also wants to emphasize that rural ILECs have the ability to disaggregate their study areas. This enables FUSF support to be targeted below the study area level so that support would be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. By disaggregating, a rural ILEC can ensure that when a wireless carrier serves low-cost exchanges it will receive a lower level of FUSF support than when it serves high-cost exchanges. This further eliminates the benefit to a wireless carrier of "cream-skimming" low-cost customers.

In Decision No. 65846, the Commission approved the disaggregation plans of Citizens, Navajo, Citizens Utilities Rural Company d/b/a Frontier Citizens Utilities Rural ("Citizens Rural"), and ATC. These disaggregation plans further alleviate concerns regarding "cream-skimming." The Commission also has the authority to approve disaggregation plans of other rural ILECs upon petition of an interested party, such as a rural ILEC itself.

ALLTEL states in its Application that if designated as an ETC, it will provide Lifeline Service to any customer that requests it within the ETC designated area. ALLTEL clarifies that while it has not yet finalized its Lifeline program, it will establish a Lifeline service offering that complies with all federal requirements.¹⁶ Should ALLTEL's Lifeline offering not meet the needs of a qualifying Lifeline customer, Lifeline support (Tiers 1, 2 and 3) is transferable to the Company's other service offerings thus making these packages available at a reduced cost. Eligible consumers thus benefit by having additional choices in addition to what is offered by the wireline carrier for their area.

ALLTEL has received awards and recognition for its customer satisfaction with its wireless service within the Phoenix area and from readers of the *Arizona Business Magazine*. Each ALLTEL call center utilizes a Language Line vendor which can provide service to Spanish speaking customers and to non-English speaking residents of the Native American communities desiring ALLTEL's customer service, operator service, and directory assistance services.¹⁷

ALLTEL states that it will meet the requirement for wireless carriers to implement Local Number Portability by November 24, 2003, in the Phoenix and Tucson MSAs.¹⁸ ALLTEL has deployed Phase I E-911 in Pima and Pinal counties. ALLTEL has not received a request from Maricopa county at this time. However, ALLTEL states that it will provide Phase I and II E-911 based on schedules for its deployment that are agreed upon by ALLTEL and the E-911 providers.¹⁹

Carriers designated as ETCs are required to certify annually with the FCC and the Universal Service Administrative Company ("USAC") that all federal high-cost support that they will receive in the next year will only be used for the provision, maintenance, and upgrading of

¹⁶ ALLTEL's Response to MK 1-8 of Staff's First Set of Data Requests.

¹⁷ ALLTEL's Response to MK 1-37 and MK 1-38 of Staff's First Set of Data Requests, and MK 3-16 of Staff's Third Set of Data Request.

¹⁸ ALLTEL's Response to MK 1-26 of Staff's First Set of Data Requests.

¹⁹ ALLTEL's Response to MK 1-39 of Staff's First Set of Data Requests and MK 3-17 of Staff's Third Set of Data Request.

facilities and services for which the support is intended, consistent with Section 254(e) of the 1996 Act.²⁰ This requirement will provide further assurances that ALLTEL will utilize its FUSF support appropriately. As a wireless, competitive ETC, Staff would recommend that this requirement for ALLTEL would be applicable and conditioned upon the Commission's reservation of right, upon a request from Staff, to audit all expenditures of these funds. Additionally, penalties, including revocation of ETC status, can be assessed if a carrier is untruthful in its certification.

Other potential benefits to consumers from designation of ALLTEL as an ETC for this geographic area include the following. Consumers should have improved access to ALLTEL's network and services as a result of FUSF support being applied to growth and enhancement of ALLTEL's facilities. Furthering the growth of competition should enhance a consumer's range of choices for their telecommunications services. For example, consumers may weigh the unlimited local usage of wireline service versus a variety of wireless packages with varying minutes of usage. Other choices a consumer may evaluate in the selection of a service provider are service mobility versus service at a fixed location as well as potential differences in local calling scope, toll calling plans, or other feature offerings. Designating ALLTEL as an ETC would further competition in rural areas. The FCC has concluded that increased competition in rural areas, through the designation of more than one ETC, is beneficial and a key part of the public interest analysis.²¹

In its Alabama Order²² the FCC indicates that questions surrounding potential growth of the high-cost fund are not properly addressed in the course of an ETC determination. Furthermore, the FCC has requested that the Federal-State Joint Board on Universal Service provide it with recommendations relating to high-cost universal support in study areas where a competitive ETC is providing service, as well as, for example, FCC rules regarding support for second lines.²³ It is uncertain when the Federal-State Joint Board on Universal Service will issue its recommendation and when the FCC will issue its ruling. Therefore, Staff recommends that the Commission review this ETC request under the current FCC guidelines rather than hold the Application in abeyance for an unquantifiable period of time.

ALLTEL has filed ETC applications in fifteen states, including Arizona. In Michigan and Wisconsin, ALLTEL has been approved as an ETC. In West Virginia, a Recommended Decision approving ALLTEL's Application has been issued. It is anticipated that this approval will be effective on October 23, 2003. ALLTEL states that there are no differences in technical

²⁰ FCC's Fourteenth Report and Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45, rlsd on May 23, 2001.

²¹ *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area In the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, Rlsd. November 27, 2002, para. 23; *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area In the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, Rlsd. December 4, 2002, para. 25.

²² *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area In the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, Rlsd. November 27, 2002, para. 32.

²³ *Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (rlsd November 8, 2002).

capabilities between its Arizona facilities and its facilities in any other state in which it has received ETC designation or in which a request is pending.²⁴

In summary, Staff has reviewed ALLTEL's Application and believes that it will provide additional consumer choice and may further the availability of advanced telecommunications services. Therefore, Staff recommends that the Commission find that ALLTEL's Application for ETC status with respect to areas served by a rural ILEC is in the public interest.

E. Staff Recommendation

Consistent with prior ETC Orders of the Commission, Staff recommends ALLTEL's Application for designation as an ETC be granted subject to the following conditions:

1. ALLTEL shall make available Lifeline and Link Up services to qualifying low-income applicants in its ETC service area no later than 90 days after a Commission Decision.
2. ALLTEL shall file an informational tariff with the Commission, setting forth the rates, terms and conditions for its general services (including, but not limited to, its Life Line and Link Up service) in the areas approved herein within thirty (30) days of an Order in this matter. On an ongoing basis ALLTEL shall comply with ARS 40-367 in amending its tariffs.
3. ALLTEL shall be required to file service area maps of the areas for which it is granted ETC status by the Commission within thirty (30) days of an Order in this matter.
4. ALLTEL shall be required to provide service quality data following a request by Commission Staff. ALLTEL shall provide such data within the timeframe given in Staff's request to ALLTEL.
5. ALLTEL shall submit any consumer complaints that may arise from its Lifeline or Link Up offerings to the Commission's Consumer Service Division, provide a regulatory contact, and comply with the provisions of the Commission's customer service and termination of service rules.
6. ALLTEL shall submit its advertising plan for Lifeline and Link Up services to Staff for review prior to commencing service.
7. ALLTEL shall be required to submit to an audit of its expenditures of its universal service funds upon a request by Commission Staff.
8. ALLTEL shall submit to the Commission an affidavit that all federal high-cost

²⁴ ALLTEL's Response to MK 3-8 of Staff's First Set of Data Requests.

support for its Arizona exchanges will only be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the 1996 Act, by September 15 of each year following ETC approval, beginning with September 15, 2004.

9. ALLTEL shall be required to utilize all federal high-cost support ^{which it receives} for its Arizona ~~exchanges~~ ^{etc same} within the State of Arizona.
10. ALLTEL shall be required to submit an annual filing detailing how it is utilizing its federal high-cost support for its Arizona exchanges by September 15 of the first five years following ETC approval, beginning with September 15, 2004, and ending on September 15, 2009.

Staff also recommends that prior to a hearing in this matter, or prior to the issuance of an Order, ALLTEL shall be required to file updates to its Exhibits D and E that were filed with its Application and which included the list of wire centers within the service areas of rural ILECs for which ALLTEL is requesting ETC designation. These updated Exhibits shall include all wire centers within the study areas of the rural ILECs cited in Exhibit D and all relevant wire centers for each of the seven rural ILECs which were cited in Exhibit E.

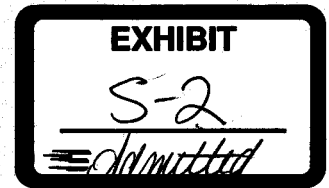
V. Conclusion

Staff recommends that the Commission find that the ALLTEL Application for Designation as an Eligible Telecommunications Carrier under U.S.C. § 214(e)(1), for areas served by non-rural ILECs, be granted for those areas within its existing licensed service contour in which Qwest is authorized to provide service.

Staff recommends that the Commission find that ALLTEL's Application for ETC designation in the areas served by rural ILECs is in the public interest. Staff further recommends that the ALLTEL Application for Designation as an Eligible Telecommunications Carrier under U.S.C. § 214(e)(2) be granted for those areas within its existing licensed service area in which a rural ILEC is certificated to provide service.

Finally, ALECA has requested a hearing in this matter. Staff is not opposed to holding a hearing in this docket.

ERRATA TO STAFF REPORT
Docket No. T-03887A-03-0316
January 23, 2004



Page 6, Section C, Para. 3, line 1

Replace "Exhibit A" with "Application Exhibit C"

Page 6, Section C, Para. 5, line 1

Replace "Exhibit B contains" with "Application Exhibits D and E contain"

Page 13, Section E, Recommendation 1, line 3

Insert at the end of the recommendation "ALLTEL shall send a letter to the Utilities Division Director to provide notification of the commencement date for the services."

Page 13, Section E, Recommendation 2, line 3

After "service)" insert "and other services for which it receives FUSF support"

Page 13, Section E, Recommendation 3, line 1

After "file" insert "with its informational tariff"

Page 13, Section E, Recommendation 4, line 1

After "data" replace "following a request by Commission Staff" with "and other information as may be required by the Commission"

Page 13, Section E, Recommendation 5, line 1

Replace "Lifeline or Link Up" with "ETC service"

Page 14, Section E, Recommendation 8, line 1 (second line of recommendation)

Replace "Arizona exchanges" with "ETC service area"

Page 14, Section E, Recommendation 9, lines 1 and 2

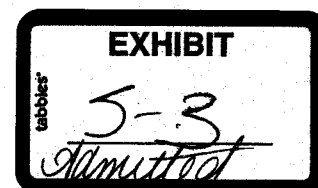
After "high-cost support" insert "which it receives"

Replace "Arizona exchanges" with "ETC service area"

After "State of Arizona" insert ", within those Arizona service areas"

Page 14, Section E, Recommendation 10, line 2

Replace "Arizona exchanges" with "ETC service area"



- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of WWC
Holding Co., Inc., for Designation as an
Eligible Telecommunications Carrier

)
)
)

DOCKET NO. 98-2216-01

REPORT AND ORDER

ISSUED: July 21, 2000

SHORT TITLE

WWC Holding Co., Inc.'s Request for Designation as an Eligible Telecommunications Carrier

SYNOPSIS

The Public Service Commission of Utah grants WWC Holding Co., Inc.'s conditional ETC status for a portion of the requested area. Specifically, WWC Holding Co., Inc., is granted conditional ETC status for the U.S. West Communications, Inc., exchanges included in its petition.

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DOCKET NO. 98-2216-01

-1-

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By The Commission:

I. PROCEDURAL HISTORY

On May 8, 1997, the Federal Communications Commission ("FCC") issued its Universal Service Report and Order, CC Docket 96-45, FCC 97-157 ("Universal Service Order") implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The Universal Service Order provides that only eligible telecommunications carriers designated by a state commission shall receive federal universal service support. Under 47 U.S.C. § 214(e), a state commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an eligible telecommunications carrier ("ETC") for a service area designated by the state commission. The FCC defines a service area as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. Together, all of a carrier's calling areas represent the overall area for which the carrier shall receive support from federal universal service support mechanisms.

On August 31, 1998, WWC Holding Co., Inc. ("Western Wireless") filed a Petition with the Public Service Commission ("Commission") for designation as an ETC in Utah to receive federal universal service support under the Act and corresponding FCC regulations, and for the purpose of receiving support from the Utah Universal Service Fund ("State Fund") established by the Commission.

Western Wireless requested ETC designation in the U.S. West local exchanges that are wholly contained in Western Wireless' coverage area as defined in Exhibits WW 1.1 and WW1.2. Western Wireless also requested designation in each rural telephone company's exchanges that are inside Western Wireless' signal coverage area in Utah. WW 1.1 is a listing of the local exchange companies and the exchanges included in Western Wireless' application. WW 1.1 is included as Appendix A to this Order. WW 1.2 is a map of the state of Utah with Western Wireless' coverage area superimposed on it. While the coverage area detailed in WW 1.2 may be accurate, the boundaries of the exchanges and service territories are not. The Commission is relying on WW 1.2 only for a description of Western Wireless' coverage area. A portion of WW 1.2 showing the coverage area is included in Appendix A.

The Utah Rural Telecom Association ("URTA") sought intervention. Five members of URTA are incumbent local exchange carriers ("LEC") and the only designated ETC in their rural study areas in which Western Wireless seeks ETC designation.

U.S. West Communications, Inc. ("U.S. West") similarly sought and was granted intervention. U.S. West is an incumbent LEC providing landline local exchange service in certain areas of Utah for which it holds a certificate of public convenience and necessity from the Commission. U.S. West is the only designated ETC for its non-rural exchanges for which Western Wireless seeks ETC designation.

The Commission sought pre-hearing briefs on certain legal issues presented by Western Wireless' Petition. The Commission heard oral arguments on October 25, 1999. Evidentiary hearings were then held on this matter on November 30 and December 1, 1999. Western Wireless offered the testimony of James Blundell, Director, External Affairs. The Division of Public Utilities ("Division") offered the testimony of Ingo Henningsen, Peggy Egbert, and Dr. George Compton. The Committee of Consumer Services ("CCS") offered the testimony of Phil Bullock. URTA offered the testimony of Raymond Hendershot. U.S. West offered the testimony of Dr. Barbara M. Wilcox.

II. STATUTORY PROVISIONS

To be designated as a federal ETC under the Act, a carrier must: (1) be a common carrier; (2) demonstrate it will provide the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) present an acceptable plan for advertising its universal service offerings and the charges therefor using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, ¶ 24.

The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:

- a. voice grade access to the public switched telephone network;
- b. local usage;
- c. dual tone multi-frequency signaling or its functional equivalent;
- d. single-party service or its functional equivalent;
- e. access to emergency services;

- f. access to operator services;
- g. access to interexchange service;
- h. access to directory assistance;
- i. toll limitation for qualifying low-income consumers.

In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

To obtain funding from the State Fund, the Commission has established the following requirements: (a) a carrier must be designated an ETC under Section 214(e) of the Act; (b) a carrier must be in compliance with applicable Commission orders and rules; (c) a carrier must offer "basic telecommunications service" as defined by Commission Rule R746-360-2; and (d) a carrier must be a facilities-based provider. Utah R746-360-7.

Provision of "basic telecommunications service" requires a carrier to provide access to the public switched network; touch-tone, or its functional equivalent; single-party service with a telephone number listed free in directories that are received free in local calling areas; access to 911 or E911 emergency services (where available); access to long-distance carriers; and access to toll limitation services. Utah R746-360-2(c).

III. DISCUSSION AND CONCLUSIONS

Federal ETC Designation

With its existing network, Western Wireless has testified that it currently provides each of the supported services set forth in 47 U.S.C. § 54.101(a). Each of the FCC's supported services provided by Western Wireless is discussed below:

a. Voice grade access to the public switched telephone network: Western Wireless provides voice-grade access to the public switched telephone network. Voice-grade access means the ability to make and receive phone calls within a bandwidth of approximately 2700 Hertz between the 300 and 3500 Hertz frequency range. 47 C.F.R. § 54.101(a)(i); Universal Service Order, ¶¶ 63-64. Through its interconnection arrangements with local telephone companies, all Western Wireless customers are able to make and receive calls on the public switched telephone network within the prescribed frequency range.

b. Local usage: The FCC requires that a universal service offering include some level of local usage at a flat rate. 47 C.F.R. § 54.101(a)(2); Universal Service Order, ¶¶ 66-69. The FCC does not currently require any minimum amount of local usage to be provided by an ETC, but has initiated a separate rulemaking proceeding to address this issue. See, Cross-3, Universal Service Further Notice of Proposed Rulemaking, FCC 98-278 (Oct. 26, 1998). Western Wireless provides local usage, and will include unlimited local usage as part of a universal service offering. Western Wireless will also comply with any minimum local usage requirements adopted by the FCC.

The Commission relies on Western Wireless' testimony to conclude that the area of free unlimited local usage offered as part of the basic universal service offer will be at least as comprehensive as the areas currently provided by the local exchange companies providing service in a given area.

c. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent: DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Western Wireless' network uses out-of-band digital signaling and in-band multi-frequency signaling. Western Wireless provides the functional equivalent of DTMF signaling in satisfaction of the FCC's requirement. 47 C.F.R. § 54.101(a)(3); Universal Service Order, ¶ 71.

d. Single-party service or its functional equivalent: Western Wireless provides the functional equivalent of single-party service. Western Wireless provides a dedicated message path for the length of a user's transmission, which the FCC has deemed to be the functional equivalent of single-party service. 47 C.F.R. § 54.101(a)(4); Universal Service Order, ¶ 62.

e. Access to emergency services: Western Wireless provides all of its customers with access to emergency services by dialing 911. The ability to reach a public emergency service provider through dialing 911 is a required universal service offering. In addressing enhanced 911 or E911 Western Wireless testified that:

E911 . . . which includes the capability of providing both automatic numbering information ("ANI") and automatic location

information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. See *Universal Service Order*, ¶¶ 72-73. Moreover, a wireless carrier such as WWC is not required to provide E911 services until a local emergency service provider has made arrangements for the delivery of ALI and ANI from carriers and has established a cost recovery mechanism. *Universal Service Order*, ¶ 73. . . . To date, no public emergency service provider in Utah has made arrangements for the delivery of ANI or ALI from WWC. (WW 1, DeJordy Direct Testimony, pg 12.)

Western Wireless testified that when it received a bona fide request from an emergency service provider in accordance with the law cited above, it would provide E911 for its wireless local loop customers.

f. Access to operator services: Western Wireless provides access to operator services to arrange for the billing or completion, or both, of a telephone call. The service is provided by either Western Wireless or other entities, including LECs or interexchange carriers, in satisfaction of the FCC's requirements. 47 C.F.R. § 54.101(a)(6); Universal Service Order, ¶ 75.

g. Access to interexchange service: Western Wireless provides access to interexchange service for the purpose of making and receiving toll or interexchange calls in satisfaction of FCC requirements. 47 C.F.R. § 54.101(a)(7); Universal Service Order, ¶ 78. This service is provided through interconnection arrangements Western Wireless has with several interexchange carriers. Western Wireless exceeds the FCC's

requirements by providing customers the ability to access their interexchange carrier of choice by dialing an appropriate access code.

h. Access to directory assistance: Western Wireless provides all of its customers with access to directory assistance by dialing "411" or "555-1212" as required by FCC Rule 54.101(a)(8) and Universal Service Order, ¶ 80.

i. Toll limitation for qualifying low-income consumers: Western Wireless currently provides toll blocking services for international calls and will use this same technology to provide a toll blocking service for its qualifying low-income consumers receiving subsidies pursuant to the federal Lifeline program. This satisfies FCC Rule 54.101(a)(9).

Western Wireless advertises its current wireless service offerings to both residential and business customers through different media services of general distribution, including newspaper, television, radio, and billboard advertising. Western Wireless also maintains retail store locations throughout its authorized service areas in Utah. Western Wireless testifies that it will advertise its universal service offerings and rates, using these same media of distribution and in a way that fully informs the general public, and will comply with any form and content requirements adopted by the FCC or the Commission in the future and required of all designated ETCs. Western Wireless thus meets the advertising requirement of 47 U.S.C. § 214(e)(1).

With regard to the U.S. West exchanges within Western Wireless' requested designated service areas listed on late-filed Exhibit WW-1.1, Western

Wireless is licensed and presently provides the supported services throughout those exchanges, and once designated as an ETC Western Wireless has testified it can and will offer and advertise universal service throughout each exchange. To the extent there might be a few small and discrete areas not within Western Wireless' existing signal coverage, Western Wireless has testified it can and shall extend its service within a reasonable time to reach any customers who request service.

With regard to the U.S. West exchanges, the Commission will not add further criteria for federal ETC designation to those set forth in Section 214(e)(1) of the Act. Universal Service Order, ¶ 24. Consistent with the Act and FCC Rules, Western Wireless satisfies all criteria for federal ETC designation in exchanges served by U.S. West that are in Western Wireless' signal coverage area.

With regard to the exchanges in the rural, or independent companies, the Commission is also required to consider if the designation of a second ETC in areas already served is consistent with the public interest. This consideration is in addition to the other measures included in the law. Western Wireless seeks ETC designation in the Utah study areas of Gunnison Telephone Company, Manti Telephone Company, Navajo Communications Company-Utah, Skyline Telecom and South Central Utah Telephone Association, Inc. ("URTA Companies"). While Western Wireless is licensed and provides the supported services throughout these companies' study areas in which it seeks designation, the Commission has concerns regarding whether the designation would actually be in the public interest.

The concerns focus primarily on the potential impact of the designation on the State's Universal Public Telecommunications Service Support Fund (the State Fund). The independent companies are currently regulated under rate of return regulation. In a sense the State Fund is the final revenue that makes these companies' rate of return meet the required levels. After all other sources of funds are considered, the State Fund must make up the difference between reasonable costs and all revenues. If, by designating Western Wireless as an additional ETC in the respective study areas of the URTA Companies, the effect is to reduce the companies' revenue, without an equal reduction in costs, the State Fund would be called upon to make up the difference. Such a situation would cause a significant increase in the burdens placed upon the State Fund (i.e., all Utah telecommunications customers) without corresponding public benefits.

Further, Western Wireless testifies that their prices may well be higher than the incumbent's prices, up to 125% of the incumbent's prices, therefore offering a lower cost service is not a benefit that can be counted on to balance out the public interest equation. In fact the primary potential benefit of designating Western Wireless as a "rural" ETC could have been that areas that are currently not served by any incumbent, but are within Western Wireless' signal coverage area, could now be served by Western Wireless. However since Western Wireless has only asked for designation in areas that are already being served, even this potential benefit is lost in the public interest analysis.

The Commission finds that because of the possible negative impact on Utah's State Fund it is not in the public interest to add a second ETC to the URTA Companies' service areas at this time. However, if Western Wireless is willing, the Commission believes that designating Western Wireless as an ETC in the areas of the state that are not currently served by any telecommunications corporation, which are generally in Western Wireless' signal coverage area, would advance universal service by bringing telecommunications services to Utah's unserved rural citizens.

State Level Qualifications for Approval to Draw on the State Fund

Western Wireless has testified it could qualify to draw from the State Fund for the U.S. West exchanges in its application area. The services supported by the State Fund as set forth in the Commission's definition of "basic telecommunications service" are similar to the FCC's service requirements under FCC Rule 54.101(a). While the Utah and FCC supported services are expressed in slightly different words, there are few substantive differences between them. As mentioned earlier, the Commission is relying on Western Wireless' testimony that the free local calling area in every area served will be as large, or larger, than the calling area currently provided by U.S. West in the exchanges in its signal coverage area if it is granted state level approval. Further, Western Wireless has testified, and we rely on that testimony as well, that they will obey the Commission's Rules with respect to qualifying to receive money from the State Fund. Specifically, Western Wireless will need to charge no more than the Affordable Base Rate for their universal service offering. The

Commission has set rates for the U.S. West exchanges dealt with in this order, and presumes that these rates represent the affordable rates for the relevant exchanges or areas.

Western Wireless currently provides within its existing network the following State Fund supported services or their functional equivalents: access to the public switched network; touch-tone; single-party service; access to 911 emergency services; access to long-distance carriers; and access to toll limitation services. Western Wireless testifies that it will provide a free telephone listing in a directory that is distributed without charge and E911 emergency services when properly requested.

We find that Western Wireless qualifies for federal ETC designation as defined by the Act and 47 C.F.R. § 54.1 et seq., in the exchanges set forth on Exhibit WW-1.1 that are part of the U.S. West service territory, for the purpose of receiving federal universal service support. Further, we find that Western Wireless qualifies for the designation of eligible telecommunications carrier for purposes of drawing from the State Fund for the exchanges and study areas as set forth on Exhibit WW-1.1 1 that are part of the U.S. West service territory. We stress that the finding that Western Wireless meets the criteria for federal and state level designation is a recognition only of their potential to provide the service. Western Wireless will be able to draw from the funds only as they provide service to actual customers, and only for so long as they remain in compliance with Commission rules (and federal guidelines) with respect to prices, quality, services, and offerings.

The Commission has jurisdiction and authority to ensure that Western Wireless continues to meet the ETC criteria set forth in Section 214(e)(1) of the Act and the requirements of the State Fund. Nothing prevents the Commission from, on its own motion, modifying, suspending or revoking Western Wireless' ETC designation if it does not meet those obligations. An ETC's obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. § 214(e)(1), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes provision of the services at an adequate service level. Whether an ETC (Western Wireless) is actually performing such services could arise in a proceeding to modify, revoke, or suspend the designation.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Western Wireless is designated an ETC under the federal guidelines in the U.S. West Local Exchanges included in their application, conditioned on meeting the requirements of this order. On the same conditions, Western Wireless is also designated as qualifying to receive State Fund disbursements as services are provided, in the same U.S. West exchanges for which federal designation has been granted. The Commission notes that it has recently approved the exchange sales in Docket 99-049-65, and is in the process of preparing an order with respect to that Docket. Therefore, the exchanges included in Docket 99-049-65 are not included in the area approved in this Order.

2. Western Wireless shall provide universal service pursuant to a written service agreement in place with its customers. The Service Agreement shall be filed for review with the Commission, and shall contain provisions which ensure it will provide universal service as defined by 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(a) and this Order. The required components of this offering are reviewed in this Order above. We note that our approval is conditional on Western Wireless offering unlimited local usage as part of the universal service offering package that covers, at a minimum, all areas currently covered by the incumbent local exchange provider on an individual calling area basis. Western Wireless may offer larger free unlimited local calling areas.

3. Approval to receive money from the State Fund is further conditioned upon Western Wireless providing directory listings as required by state rule, and on their charging a price for basic telecommunications service that is less than or equal to the affordable base rate. At such time as Western Wireless seeks reimbursement from the State Fund, it shall seek reimbursement only for those universal service offerings priced at or below the affordable base rate, as defined in Commission Rule R746-360-7(B), and only for a support area where its total average revenue per line is less than the USF cost proxy model costs as set forth in Commission Rule R746-360-7(B), subject to any future amendments to the Commission's rules for funding from the State Fund.

4. Pursuant to U.C.A. §63-46b-13, an aggrieved party may file, within 20 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. §54-7-15, failure to file such a request precludes judicial

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review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§63-46b-1 et seq.).

DATED at Salt Lake City, Utah, this 21st day of July, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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APPENDIX A

Western Wireless WW 1.1

Locality	Company Name	Coverage by WWC	Entire Study Area of Telco Served
GUNNISON	GUNNISON TEL CO	YES	YES
MANTI	MANTI TEL CO	YES	YES
HALCHITA	NAVAJO COMMUNICAITONS CO - UT	YES	YES
MONTEZUMA	NAVAJO COMMUNICATIONS	YES	YES
MONUMENT V	NAVAJO COMMUNICATION CO - UT	YES	YES
EUREKA	SKYLINE TELECOM	YES	YES
GOSHEN	SKYLINE TELECOM	YES	YES
MORONI	SKYLINE TELECOM	YES	YES
ANTIMONY	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
APPLE VALL	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BICKNELL	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BOULDER	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BRYCE CANY	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BERYL	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
CANNONVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
CIRCLEVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
SUCK CREEK	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
ENTERPRISE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
ESCALANTE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
PANGUITCH	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
KANAB	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
KOOSHAREM	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
LOA	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
MILFORD	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
MINERSVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
MARYSVALE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
ORDERVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
PANGUITCH	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BEAVER	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
BRIAN HEAD	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
CEDAR CITY	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
EPHRAIM	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
HANKSVILLE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
HURRICANE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
MOUNT PLEA	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
MONROE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
NEPHI	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
PAROWAN	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
PAYSON	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
RICHFIELD	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
SALEM	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
SALINA	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
SPRINGDALE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A

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ST GEORGE (1)	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
ST GEORGE (2)	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
ST GEORGE (3)	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A

Western Wireless 1.2 (Electronic Version)

See Attached Acrobat file f3997.pdf